Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

Vol. VII.—Part I.

GALE LIBRARY

Published by Authority of the Council.

Calcutta:
PRINTED AT THE BENGAL SECRETARIAT OFFICE.

1873.

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BENGAL SECRETARIAT LIBRARY

PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 11th January 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble F. L. BEAUFORT,
The Hon'ble V. H. SCHALCH,
The Hon'ble LORD ULICK BROWNE,
The Hon'ble C. E. BERNARD,
The Hon'ble MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble B. D. COLVIN,
The Hon'ble T. M. ROBINSON,
The Hon'ble F. F. WYMAN,
AND
The Hon'ble BABOO DIGUMBER MITTER.

The Hon'ble Moulvie Abdool Luteef and the Hon'ble Baboo Digumber Mitter made solemn declarations of allegiance and that they would faithfully fulfil the duties of their office.

SALT ACT AMENDMENT.

The HON'BLE MR. BEAUFORT moved for leave to bring in a Bill to amend "The Salt Act, 1864." In doing so he said the draft of the Bill was in the hands of the Members, and he would now only state shortly the reason for introducing it. The necessity for the Bill arose from the introduction of the new Code of Criminal Procedure, which provided a new distribution of the powers of Magistrates. Under the Salt Act the word "Magistrate" meant a person exercising the full powers of a Magistrate, and under the new Code of Criminal Procedure that would be a Magistrate of the first class.

It had been determined that the powers of a Magistrate of the first class should not be vested in all the officers who had under the old Act been vested

with full powers; and, as many of the salt cases would go before Magistrates of the second class, it had been deemed proper to extend to such officers the power to inquire into and to try such cases. The object of the Bill was to confer on Magistrates of the second class the same jurisdiction as the present law gives to first class Magistrates.

The opportunity had been taken to provide that the references in the Act to the old Calcutta Police Acts, XIII of 1856 and XLVIII of 1860, should be taken to be made to the new Police Act, IV (B.C.) of 1866.

His Honor the President said he might say in addition to what had fallen from the hon'ble member who introduced the Bill, that it might be also necessary to note that it was not only the redistribution of Magistrates' powers which had rendered this Bill desirable, but that also under the old Act it often happened that Magistrates of the first class were not available in the remote sea-side districts, where offences against the salt laws were generally committed. The offences to be tried were petty; the punishment inflicted was petty, generally nothing more than a small fine. And it would be hard, both upon the witnesses and the parties concerned, that in petty cases of this kind it should be necessary to send all these people to long distances, to Cuttack or Midnapore for instance, rather than try the offender on the spot, where a petty fine would in all probability be inflicted. For these reasons His Honor hoped the Council would think it right to allow the Bill to be introduced.

The motion was agreed to.

EMBANKMENTS AND WATER-COURSES.

The Hon'ble Mr. Schalch said, it would be in the recollection of the Council that a Bill was introduced in December 1870 to amend the then existing Act relating to embankments. That Bill was referred to a Select Committee, and was the subject of much consideration and discussion in Committee. The Committee reported in August 1871, when for reasons then stated by his hon'ble friend on the left (Mr. Bernard), the consideration of the Bill was deferred, and the Bill was again submitted for revision to a Select Committee. That Committee submitted a report in August last, shortly before the close of the sittings of the Council; and the Bill as amended and submitted by them was circulated and published for general information. Since then he (Mr. Schalch) had had the assistance of the hon'ble member opposite (Mr. Beaufort) in going through the provisions of the Bill, and it struck them that a considerable number of alterations and amendments should be made in the Bill. The Council had before them a paper of the alterations and amendments which were proposed. The amendments seemed very numerous, but he believed that on examination the majority of them would be found to be of a merely verbal character, and such as were calculated to carry out more fully and more clearly the sections of the Bill.

There were, however, one or two of the amendments which did import to a certain extent new principles, and on those he now wished to offer a few

remarks. Of those, first came the amendment in line 17 of section 43. The proposal was to enable Collectors, in those cases where the benefit derived from an embankment might be very largely shared by a municipality, to assess a share of the cost of construction and maintenance on the municipality, so that the whole expense might not fall on the zemindars, who might receive in many instances only a very small portion of the benefit derived from the embankment. To give effect to that principle a further amendment was proposed in the new section 49A, and in the conclusion of section 54.

Another entirely new provision would be found in the amendment proposed in section 48. That section prescribed the manner in which the apportionment of the expenses might be made amongst the zemindars who benefited from the embankment: the expense was to be apportioned either according to the area of the lands benefited or protected by the embankment, or by the actual benefit derived by the estate; or in those cases where it had been the custom to pay on a proportion of the sudder jumma, it rendered it optional with the Collector to employ that mode of apportionment. But there is a long line of embankments in the Sarun district on the River Gunduck. These embankments have for years past been repaired by the zemindars of that district, and the expense thereof paid by them in proportion to the amount of revenue payable by them respectively; and therefore it was proposed to add a proviso to section 48 to carry out, in the district of Sarun, the practice that had heretofore there existed, by providing that such a mode of apportioning the cost should not be permissive but compulsory.

The third amendment to which he would refer was that contained in section 49B. It was a section which had been taken from the Road Cess Act, and was intended to apply to places where there where *lakhiraj* tenures. These tenures it was provided should be held to be a part of the estate or tenure within whose local boundaries they were included; or if they were not included within the local boundaries of any estate or tenure, then the Collector was empowered to declare in what estate they were to be included.

Lastly, Mr. Schalch would refer to the proposed section 58A. By the Bill as it stood, persons constructing any dam or other obstruction in an embankment, or making a new embankment without the previous permission of the engineer, were liable to punishment; but there was no provision for removing the obstruction or embankment illegally constructed. The section which was proposed would supply that defect.

He had intended to move that the consideration of the Bill should be postponed for a fortnight, so that hon'ble members might have full opportunity to consider the amendments which were proposed. It had, however, been suggested to him that the Council would prefer that the Bill should be recommitted, and that these amendments should be submitted for the consideration of the Committee. He believed that that course would meet the approval of the Council. He would therefore move that the Bill be recommitted with a view to the consideration only of the amendments now proposed to be made in the Bill, and that the Committee consist of the former members, namely the Hon'ble

Messrs. Beaufort, Bernard, Robinson, Joteendro Mohun Tagore, Digumber Mitter, and the mover, with instructions to report within a fortnight.

His Honor the President said, before putting the motion to the Council he would only make one or two observations. He entirely agreed with what had fallen from the hon'ble member. His Honor had not examined the amendments which the hon'ble member had placed on the table with anything like minute criticism; but he thought it was absolutely necessary that some provision should be made with regard to the assessment of municipalities, which would benefit by the protection they received from embankments constructed or maintained under the provisions of the Bill. What he would more particularly address himself to was the amendment indicated as the new section 69, following sections 67 and 68. It was the proposal of the hon'ble member to give power to the Government to extend the provisions of "The Hooghly and Burdwan Drainage Act, 1871," to any other scheme of drainage improvement in other parts of the country. The hon'ble member in charge of the Bill consulted His Honor on this point, and he agreed that it was most desirable some provision of that kind should be made. The general provisions of this Bill had for their primary object the maintenance and management of embankments: in a somewhat secondary place was put the management of drainage channels; but he thought the hon'ble member was right in supposing that the provisions of this general Bill were mainly intended for what were called minor works of drainage subsidiary to the larger embankment works. On the one hand we knew that Bengal was a country where, for the improvement both of sanitation and agriculture, great works of drainage ought to be undertaken. It was said at the time that the Hooghly Drainage Act was an experiment, and in one sense the measure had not yet passed beyond the stage of experiment, that was to say the proposed works had not yet been carried out. On the other hand he might say that the experiment had been carried to this stage, that the consent of the parties concerned had been obtained; the machinery by which that consent should be ascertained had been set in motion, and so far as the proceedings had gone, His Honor believed that no objection had been taken, the parties interested having accepted the Act as a proper solution of the manner in which the improvement might be effected. The result had been so far encouraging, and he thought we might hope that with or without modification the Act might be applied to other parts of the country. It was extremely desirable that the matter should be put on a complete footing as soon as possible, and that means might be given to proprietors of land and other persons interested in other parts of the country of undertaking similar works of drainage. Therefore, if the Committee should think fit to recommend, and the Council should think fit to adopt, the proposal to give the Government power to extend the Drainage Act to other parts of the country, he thought a great public interest would be subserved. With that view His Honor had no doubt that this important matter would be carefully considered by the Committee. That Committee had already gone through the great labour of examining the

various provisions of the Bill, and the Council were much indebted to them for their services, and probably it would not be desirable that those questions should again be ripped up; but it was very desirable that the new questions raised by these proposed amendments should be duly and fully considered by that Committee. The question, then, before the Council was, that the amendments placed upon the table should be referred to a Committee composed of the same members as before, with a view to their considering the scope and effect of those amendments, and submitting a report thereon within a fortnight.

The motion was agreed to.

The Council was adjourned to Saturday, the 25th instant.

Saturday, the 25th January 1873.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble F. L. Beaufort,
The Hon'ble V. H. Schalch,
The Hon'ble Lord Ulick Browne,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble B. D. Colvin,
The Hon'ble T. M. Robinson,
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor, and
The Hon'ble Baboo Digumber Mitter.

EMBANKMENTS AND WATER-COURSES.

The Hon'ble Mr. Schalch laid before the Council the report of the Select Committee appointed to consider amendments referred to them in the Bill to amend the law relating to embankments and water-courses. The report was now before the members, and he did not think it would be necessary for him to detain them long in the remarks which he was about to make. The Select Committee had accepted the amendments submitted to them with one or two slight variations, and had in their report remarked on the most important of those amendments. At the last meeting he offered a few remarks on the most important points, and His Honor the President supplemented those remarks in regard to one subject, the power to extend the Hooghly and Burdwan Drainage Act, which Mr. Schalch had omitted to notice. He now proposed that the report be received, and that the consideration of the Bill be deferred for a fortnight, so as to allow full time to members to look through the Bill, and he hoped that any hon'ble member who might desire to submit any amendments would send them in to the Secretary by next Saturday, so that they might be

carefully looked into and considered, before the Council proceeded with the consideration of the Bill on that day fortnight. He might mention that a petition was received from the British Indian Association too late to be printed and circulated to members. It was in the hands of the Secretary, and would be printed and furnished to the members as soon as possible. His present motion was that the report of the Select Committee be received and that the Bill be considered, in the form recommended by the Select Committee, on that day fortnight.

The motion was agreed to.

SALT ACT AMENDMENT.

The HON'BLE MR. BEAUFORT moved that the Bill to amend the Salt Act, 1864, be read in Council. He observed that at the last sitting he entered into a short explanation of the legal bearings of the Bill, and His Honor the President explained the practical necessity of it. He did not think it necessary to say anything more on the present occasion.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Messrs. Schalch, Bernard, Digumber Mitter, and the mover, with instructions to report in a fortnight.

The motion was agreed to.

The Council was adjourned to Saturday, the 8th February 1873.

Saturday, the 8th February 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble F. L. BEAUFORT.
The Hon'ble V. H. SCHALCH.
The Hon'ble C. E. BERNARD.
The Hon'ble MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble B. D. COLVIN.
The Hon'ble T. M. ROBINSON.
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR.
AND
The Hon'ble BABOO DIGUMBER MITTER.

MOFUSSIL MUNICIPALITIES.

HIS HONOR the Lieutenant-Governor said—It is my duty formally to announce to you that His Excellency the Viceroy has been pleased to refuse his assent to the Bill to amend and consolidate the law relating to Municipalities. The Viceroy has been pleased to publish the reasons for that refusal in the *Gazette*, and you are probably already aware of them. I feel I owe to the

Council some apology for having imposed upon them much labor which has come to naught. I may say for my own part that I also very largely shared with the members of the Council that labor ; and I may also say, as some excuse for myself, that when I submitted the Bill to the Council, I had no reason to anticipate the views on the subject of local taxation which are held by the present Head of the Government in India.

However, the Viceroy has refused his assent to the Bill : as I have said, the reasons for that refusal have been published, and they will be laid before you. It only remains, then, for me to explain the course I propose to follow, and which I shall ask the Council to follow, in the state of things which now exists. I will refer to the letter announcing the reasons which induced the Viceroy to give his refusal in regard to one or two points in that letter as guiding our future course. The most important paragraph, perhaps, is this, which I will read to the Council :—

His Excellency says :—

"While, however, His Excellency has felt it to be his duty, for the above reasons, to withhold his assent from the Bill, he fully recognizes the fact that it contains many useful amendments of the existing law with respect to Municipalities in Bengal; and the discussions which have taken place in the Legislative Council of Bengal, have satisfied him that some changes in that law might be made with advantage."

That is paragraph 8 of the letter. It may be considered that that paragraph does to a certain extent invite us to reconsider this matter, to bring forward a new Bill embodying amendments and improvements on the existing law, such as the Viceroy might be willing to consider. I have fully considered that view of the case ; but after due consideration I have come to the conclusion that I am not prepared to lay before the Council a new Municipal Bill of a general character. If the objections of the Viceroy had been of a partial character ; if the situation had been such as that of the Government of India in regard to the Irrigation Bill which has lately been reconsidered by the Legislative Council of India after having been negatived by the Secretary of State ; if the objections of the Viceroy had been, in any degree, of a particular, and not of a general character, then, probably a corresponding course might have been a proper course for us to follow. For instance, if the objections stated in the 5th paragraph of the Viceroy's letter had been the only objections, we might have tried another Bill. However much I may regret that His Excellency is opposed to the smallest modicum of compulsory rating in towns for primary education, that might be considered as a distinct and separate subject, and one which might be left apart from the Bill. On the other hand, with respect to the objection to the arrangement of Town Police imported into the Bill, I might have hoped that, when fully considered, His Excellency might have been persuaded to give his consent to that change in the management of the Town Police, which I thought a fair concession to the very distinctly expressed wishes of the people of towns in Bengal. The sections in the Municipal Bill which relate to the Police were, I believe, specially acceptable to the Native Members of the Council, as it reduced the burden of the Police in towns and

gave the Municipalities a greater control over the Police which they paid for. Again, His Excellency the Viceroy has expressed his disinclination that Municipalities should contribute, even voluntarily, towards the relief of the poor in times of exceptional distress. No doubt, our experience of the working of the Poor Laws in England has not been altogether favorable. And His Excellency has said that in extreme cases, in times of famine and very exceptional distress, contributions should be made from the general treasury. That is a view which I should not, as representing local interests, seem to contend against. I should be willing to remove that provision from the Bill, on the understanding that the Government of India will supply the necessary funds on occasions of famine which has been reserved as an Imperial as distinguished from a Provincial charge. Finally, the objections of the Viceroy to the provisions in the Municipal Bill which were substituted for Act VI of 1870, the Chowkeedarce Act, are of a character which might have made it desirable to separate that measure and deal with it separately. As I have said, if the objections of His Excellency had been confined to all or any of these particular provisions, I should gladly have undertaken the labor of the preparation of a new Bill Also, if the objections had been to any particular tax, or to any one or two or more of the new taxes which as optional and alternative taxes were introduced into our Bill, in that case also I should be perfectly ready to surrender my own opinion. I should have done so not altogether very unwillingly. I am not prepared to say that the view taken by the Council in former days, namely, that direct taxation in the nature of a local property and income tax on means and substance is the fairest to all parties, may not have been a sound one, provided the rule is well and fairly applied to all. I am not prepared to say that it may not be that indirect taxes, inasmuch as they are less immediately felt, may not on that account be liable to be somewhat unduly increased, as has been perhaps in some instances the case in the Panjab and in other Provinces. And if His Excellency had told us that his view is that we should stick to one form of taxation, namely, a direct tax on the means and substance of the tax-payer as provided in most of our present Municipal Acts, I should not be inclined to contend against that decision, and should be ready to meet the views of His Excellency in a new Bill. If, on the other hand, His Excellency had told us that there should not be any indication of the taxes to be imposed, that it would be better that the law should be passed in a general form as to taxation, which should be regulated by the local Government, subject to the control of the Government of India; if he had suggested that our Bill should be modelled on the model of the Panjab Bill just passed, where the taxation is not limited by law, but is liable to be limited by rules prescribed by the Government of India, that also I should be prepared to accept, if the Council were prepared to accept such a solution.

My object has been throughout not an increase of taxation, but the introduction of a system of self-government. My impression is that if the Bill which I had the honor to lay before the Council, had been carried out *bonâ fide*, and in the spirit of its provisions, it would not have led to increase in the *rate* of

taxation. The little burden which may have been imposed for education would have been met by the relief that would be given in the cost of maintaining the Police; so that compulsory rating in towns would not have been increased. Then, if the taxation in excess of such moderate compulsory rating should be really and truly voluntary as the Bill provided, my impression is strong that you would not find the people too ready to tax themselves. If the Bill had been successful, if it had proved acceptable to the people, it is very likely it would have been extended to more towns, and there would have been an increase in the area, but not in the rate of Municipal taxation. The Council are perhaps aware (the figures have been published) that the total amount of Municipal taxation in Bengal is far less than in other Provinces. I find that the rate of taxation is also far less than in other Provinces; the incidence of taxation, the rate per head in the towns subject to the Municipal system, is far less than in the North Western Provinces, far less than in the Panjab; less than in Madras; less, I believe, than in any other Province in India. But low as our local taxation is, my own wish was not to speedily increase the rate of taxation, but to present to the people of Bengal a system of voluntary taxation, which they might eventually have extended over a greater area and to new objects really acceptable to them.

Be that as it may, what I was submitting to the Council is this, that I apprehend that the objections of the Viceroy to the Bill are of too radical and sweeping a character to make it possible that I should attempt a tinkering of the Bill with any success. I think that the objections expressed in the 6th paragraph of the Viceroy's letter are such that it seems clear that His Excellency objects to the whole Bill, and to the whole principle on which it is based, and that no mere tinkering is likely to make it satisfactory to His Excellency at the present time. That being so, my course has been very respectfully to tell His Excellency that I am not prepared to attempt to introduce another Municipal Bill of a general character. That task I shall leave to my successors. If I were in my own country, if I were a native of this country, I should have felt it my duty to wait for an opportunity to try again; to wait for times when a proposition of this kind might be more favourably received; to try another time, and another yet, to concoct a Bill which would have some chance of being accepted. But being a stranger and a sojourner in the land, I feel that I have sufficiently done my duty in elaborating and proposing the best Bill I can; in placing before the Council a system of municipal administration, such as, according to my lights, I think best calculated to give the people real local self-government. Since that effort has been unsuccessful, I must leave it to others to try again some other day. Therefore I have told the Viceroy most respectfully that I shall not attempt to introduce a general Municipal Bill again.

Then comes the question what we are to do with reference to the present position as affected by the paragraphs of the Viceroy's letter which I have read, and those which I shall read. My view is that we must make the most of the Municipal Acts which we have at present. No doubt, they give to the Government the power of compulsory taxation for the maintenance and construction of

roads, for conservancy, for hospitals and vaccination, and for other purposes, which, under the existing law, may be carried far beyond the point to which they are now carried. My feeling is that it is well that I should observe not only the letter, but the spirit of His Excellency's decision in regard to the present Bill. It is not desirable that I should, by means of the existing Acts, attempt to increase taxation in the country.

I come then to the particular points affected by the present decision. The first point is in regard to the provision for roads. In the Acts which now have force in Bengal, it is compulsory on Municipalities to provide for the construction and maintenance of roads. It was an object of the Bill, which has not been carried out, to supplement the Road Cess Act of the previous session, inasmuch as by the provisions of that Act Municipalities are exempted from the rating for roads which prevails in the rest of the country. It is evidently necessary that the district roads should in their course pass through towns, and it is but fair that the people of the towns through which district roads are carried should pay for the maintenance of that portion of the roads which pass through their towns. I think I shall not be acting contrary to the spirit of the Viceroy's decision if I arrange that so much as is necessary to give effect to that equitable obligation for roads shall be charged in the Municipal Budgets of the towns through which district roads pass. So much is in our power, and I shall I hope be able by this indirect means to supplement the Road Cess Act, and to answer that the portions of district roads passing through Municipalities shall be maintained at the expense of such Municipalities.

Then we come to the subject of Police. Whatever the fate of the measure in other respects, I regret that I should have been deprived of the opportunity of making this concession to Municipalities in regard to the character and cost of Municipal Police, and thus establishing a saving which they might devote to the furtherance of other objects. But, in looking into the matter, I find that the present law will not permit us to make any material change. Act VI of 1868, section 8, is in these words: "All police officers appointed or employed in any town shall be appointed under the provisions of Act V of 1861, passed by the Governor General of India in Council." That is the regular Police Act. Under these circumstances, it is impossible that I can change the police system in towns. The law requires that they shall be enrolled as part of the regular District Police, and things therefore must, in this respect, remain as they are.

Then I come to a very important part of His Excellency's letter, paragraph 9, which refers to the system of self-government, which was the main object I had in placing the Bill before the Council:—

"His Excellency believes that under Act VI of 1868 and the District Road Cess Act of 1870, sufficient powers now exist for the introduction into Bengal of a system under which municipal and local affairs may gradually come to be administered by bodies in which the people are represented, and any proposal which the Legislative Council of Bengal may make to amend Act III of 1864 in the same direction would command His Excellency's favourable consideration."

Well, I have given much consideration to that paragraph of His Excellency's letter. I may say that, the whole question of taxation apart, I should be delighted to give effect to the permission which this paragraph contains, if I thought I could do so with reasonable prospect of success. I hold very earnest views on the subject of local self-government. I believe that the position of foreigners like ourselves in India is a somewhat false one. I believe it is our duty to educate the people, as far as in our power, to govern themselves. I believe that the power and the habit of self-government must come from below upwards; that it must come from municipal institutions first, going upwards to higher and larger institutions. And it was very much in that view that I have been anxious to have authority to make a commencement of a scheme of local municipal self-government. Anticipating the probability of the passing of the Bill which I had placed before the Council, and which they favourably received, I inquired by circular from various officers, directing them to sound the feelings of the people of towns and Municipalities on the subject of self-government by elected representatives, and I hold an abstract of their reports in my hand. I am quite free to confess that those reports are not very encouraging. I am aware that many officers have reported, and reported truly, that all local taxation and local rating is unpopular in Bengal as it is in most countries. I must also confess that the reports of most of these officers are generally unfavourable to any system of Municipal self-government. I find the opinion very strongly expressed, which coincides very much with my own opinion to-day expressed to you, that a voluntary system will not lead to an increase, but to a decrease of taxation. If we have elected members, "the only object (one Magistrate says) of the new class of members would be the reduction of the taxes to a minimum." The next Magistrate is of the same opinion. Another Magistrate says that if power is delegated to independent elected Commissioners, they will immediately "stop all improvements." I should myself be willing to run the risk of a check to improvements, feeling that the power of self-government is even more important than material improvement. I find, however, that the Magistrates also express the strong opinion of many whom they have consulted, as well as their own, that the people are not fit for self-government. One thinks that they "are incapable of understanding what is meant by representation." Another thinks that "the people have more faith in English officials than in their own countrymen; that they have no independence, and no sympathy with the police in the suppression of crime." At present (he goes on) "it is nearly as hard to get Municipal Commissioners as it is to get jurors;" and he thinks "the elective system is undesired and undesirable." Another Magistrate says that a meeting was called of the respectable people.—I do not know whom he calls "the respectable people,"—at which it was resolved that the scheme was "premature." The Commissioner of a great Division says that Magistrates with the help and advice of native gentlemen could do much better than elected representatives could. I will only quote the opinion of one more officer who has given a very decided opinion, namely that "self-government is a deplorable mistake in England; and if it is introduced into Balasore, roads will become impassable and sanitation be done

away with." That is a very strong opinion indeed. I am not prepared to say that there is not a great deal of truth in these observations. But the moral I would draw from them is, not that municipal institutions are in this country impossible, but that they are difficult of introduction in the present state of matters, and that they ought not to be introduced under disadvantageous circumstances which do not offer the best chances of success. I am myself convinced that, in spite of these difficulties and objections, municipal self-government is not foreign to this country, but inherent to it, being the ancient rule and habit of the Hindu race. I am convinced that these municipal institutions are in themselves most desirable. I would above all things deprecate their being tried under disadvantages which may lead to failure in their results, and so may cause discredit to the system; but I think they should be introduced when they can be introduced under circumstances which give the best and greatest chances of success.

Well, looking to see whether there are in the Acts now existing materials for such a fair trial, I find that the only Municipal Act admitting of elective institutions is Act VI of 1868. Power is there given to the local Government to cause the election of Municipal Commissioners. That power is no doubt somewhat obscurely expressed, but I believe that it exists. And if there were no other difficulties, I shall be quite prepared to give the towns in which Act VI of 1868 is in force the power of electing Municipal Commissioners. But I have said that I think it necessary, if the elective principle is tried at all, that it should be introduced under the most favorable circumstances. Now, what are the circumstances under which it might be tried under that law? What are the functions of Municipal Commissioners under Act VI of 1868? I find, when I look to that Act, that the principal duties of Municipal Commissioners under the Act are defined to be "to consult and advise with the Magistrate." I find that in reality they have no independent powers at all. Under section 15 of that Act the mode of taxation is this. Not the Municipal Commissioners, but the Magistrate prepares the budget, showing what money is to be raised and expended. Then the Municipal Commissioners have the opportunity of saying what they have to say. In regard to the preparation of the budget, they have the power of tendering advice. The Magistrate prepares the budget, the Commissioners may object to the items in that budget, and the Magistrate may listen to their objections or not, as he thinks fit. The budget then goes to the Commissioner of the division, and he again may alter it; he may put into it whatever items he thinks fit. So that in reality Act VI of 1868 is throughout a compulsory Act. The taxation under that Act is compulsory. The Municipal Commissioners have only the moral power of doing what they can by argument. But they have no real power. The question is whether we really can expect that elective institutions can be fairly tried under such a system. I think not. If the Municipal Commissioners are to have no power, but to consult and advise, you cannot expect that the people will take a real interest in representative institutions. If you are gradually to bring the people to appreciate the system of self-government, to lead them to take an interest in their own affairs, they must have real and practical power in their own affairs. And the greatest

power of all being taxation, they must have real power in respect of taxation. I do not think that elective institutions will be fairly tried if we attempt it under a system under which we can only allow elective bodies to consult and to advise. For these reasons I am not prepared to try elective institutions under Act VI of 1868, while the people express no wish for such institutions.

Next, mention is made in the Viceroy's letter of the District Road Cess Act. It is true that under that Act provision is made for elective institutions; but the course I intended was first to try elective institutions in a small area in Municipalities, and then, if the system succeeded, to extend them to greater areas in districts. Undoubtedly, great power is vested in the District Committees under the Road Cess Act. The District Committee is the power which determines the rate and amount of taxation for roads and other means of communication. And if it were possible to entrust the choice of those Committees to popular elective bodies, I should be most ready to do so. But when I look the matter in the face, I fear that the difficulties in the way of the election of those Committees are appalling. Those who know what County elections are in England, will have little difficulty in realising what difficulty there will be in making elections in the much larger areas of districts in Bengal. An Indian district is as large as three or four ordinary Counties in England. An election for an Indian district would be something like what an election for the whole County of Yorkshire would be. Most of us have some idea what the difficulties would be if we were to attempt a really popular election in so great a tract of country. I much fear that such an election would be almost impossible to carry out satisfactorily: the difficulty quite appals me.

Then as regards the sub-committees for the sub-divisions under the Road Cess Act. There I am met with the same difficulty as that which exists in regard to Act VI of 1868, namely that the sub-committees are only administrative bodies to administer the funds assigned to them by the district committees or the Government. They have no power over the rate or amount of taxation. That is my difficulty in regard to sub-committees under the Road Cess Act. If I saw my way to the creation of elective institutions in which the people could take a real part in the management of their own affairs, I should be prepared to attempt it. But I am not very sanguine on the subject of making a first beginning with Road Cess Committees.

Finally, there is Act III of 1864. That Act does not contain any provision for elective institutions. And my impression is that, in order properly to introduce elective institutions under that Act, so radical a change in the Act would be required as would almost amount to a large Municipal Bill, such as I am not prepared to attempt. Amidst the many reports which the Government has received unfavourable to the prospects of municipal self-government, there are one or two which, if not calculated to induce one to take a very sanguine view, show that there are two or three towns in which the people are not indisposed to aid in the establishment of elective institutions. It is reported that "in Midnapore the feeling is strongly in favor of representative Government, owing to all municipal arrangements having fallen into the hands of the Joint-Magis-

trate." That sounds somewhat like a local and temporary reason; but if the people of Midnapore adhere to their opinion in favour of elective institutions, I shall be very sorry that they should be disappointed. In Nuddea, it is said, the scheme seems to be popular, at least with the upper and middle classes. The Magistrate would certainly not allow elective institutions in Santipore, the inhabitants of which presented a petition for its trial, but where the supervision must necessarily be slight, and "factions are strong and bitter." I am told that factions are really strong and bitter in Santipore, and I fear it is not a place in which municipal institutions can be first tried with the best hopes of success. But the Magistrate would introduce the scheme tentatively in Kishnagur. Therefore the only two towns in which I am encourged to try elective institutions are Midnapore and Kishnagur. Both those towns are under Act III of 1864, which is not an Act admitting of elective institutions. The Viceroy has said that he is willing to consider a plan for altering Act III of 1864 in that sense. If I see my way to an alteration, which will admit of elective institutions, without attempting a radically new Bill, I shall be prepared to attempt it. But for the present any attempt at elective institutions must be of a very limited character, and confined to those few cases in which the people have expressed a wish to have such institutions.

That being so, I must, very reluctantly I say it, give up the idea of making any large attempt to introduce self-governing institutions in Bengal. It was perhaps of all the plans which I have designed my most cherished idea. I have done my best, and I must submit to the decision at which the superior authority to whom this power is entrusted has arrived. I will still hope that our work has not been entirely lost. The Viceroy has been pleased to bear testimony to the importance and usefulness of our work. I am not without hope that it may fructify another day. For the present it has come to naught. But perhaps another day may come when some such plan will not be regarded with such disfavor by the representative of Her Majesty. When the people of Bengal are a little further advanced, perhaps they will regret the opportunity of self-government which has now gone by. Even now I am not sure that when they come to think of it, some will not regret it. However, as I have said, I hope our labor is not utterly lost. In that hope I shall direct that the Bill as passed by this Council and the most important part of the proceedings in connection with the Bill, including the speeches of hon'ble members, shall be bound up in a volume, which I shall have the honor to present to the members and to those outside who may wish to possess themselves of such a treasure.

Before I sit down, there are one or two further subjects touched upon in the letter from His Excellency the Viceroy, regarding which I must say a few words as to the course I intend to follow. In paragraph 10 His Excellency makes this important remark:—

"It might be in His Excellency's opinion desirable to amend the present law, so as to enable Municipalities under Acts III of 1864, and VI of 1868, voluntarily to contribute in aid of education within their districts."

The only difficulty which strikes me is this, that the present Acts are so entirely of a compulsory nature that it would be somewhat difficult to engraft on them voluntary provisions. But the object is a great one. The people of Bengal are so much inclined to further education, that I think they will voluntarily contribute towards education. And I shall not shrink from any difficulties not absolutely insuperable. I hope to lay before the Council a Bill which will permit the Municipalities governed by these Acts voluntarily to contribute to the promotion of education within their limits.

There is only one more important subject which I wish to notice, namely, the observations of His Excellency regarding the part of the Bill founded on Act VI of 1870, the Chowkeedaree Act. His Excellency says:—

"In consequence of reports which have recently been received of the operation of Act VI of 1870, he entertains great doubts as to the suitability of the powers given to punchayets under that Act; he thinks therefore that further experience is required before the functions of such punchayets are increased, and Municipal institutions further extended to the rural population."

It seems to me, and I think it will seem to the Council, that the objections which His Excellency has taken to the provisions of the Municipal Bill on this subject, do in fact refer, not to the reforms made upon Act VI of 1870, but to that Act itself. His Excellency's objections are to the system of village government under Act VI of 1870, and not to the improvements and reforms on that Act which are contained in the Municipal Bill. The situation in the matter then is this. I myself have a very strong objection to the provisions of Act VI of 1870 in regard to chakran lands; and I have before announced my intention not further to extend that Act in districts in which chakran lands abound. His Excellency the Viceroy has a strong objection to the whole system of that Act, to the power given to punchayets under the Act. I shall be acting in the spirit of His Excellency's views in refraining from putting that Act into operation in fresh districts at present. Then the question would be whether it would be desirable to repeal that Act and reconsider the whole subject; or whether it could be amended by making the character of the village institutions set up more simple—simplifying the constitution and modifying the powers exercised by punchayets. I am not prepared to say which course the Government will take in that matter. We will give the subject our best consideration, and no steps will be taken to extend the operation of that Act in the meantime.

I think I have laid before the Council as clearly as I can the course it is proposed to follow in regard to these very important matters which are involved in the decision of the Viceroy regarding the Municipal Bill. The Council may depend on it that although I am not prepared to bring in a new general Bill, I shall not allow discouragement to prevent me from trying to make such minor improvements as may still be in my power. I shall carry out those partial improvements which His Excellency's decision permits, so far as I think they can be usefully and advantageously carried out.

Having said so much, I shall not detain the Council any longer at present, but shall leave in the hands of the Council the measures which I may place before them to give effect to the views which I have expressed.

SALT ACT AMENDMENT.

THE HON'BLE MR. BEAUFORT presented the report of the Select Committee on the Bill to amend the Salt Act, 1864, and moved that it be taken into consideration in order to the settlement of the clauses of the Bill in the form recommended by the Select Committee. He said the Select Committee had made a very small alteration in the Bill by introducing a few words at the end of section 1 for the purpose of defining the powers of Magistrates with reference to the Code of Criminal Procedure. He did not think he need trouble the Council with any remarks on this occasion.

The motion was agreed to.

THE HON'BLE MR. BERNARD said that a Collector in one of the Salt Districts of Bengal had sent up to the Government recommendations for the improvement of the Salt Laws. These were laid before the Government of Bengal; but it seemed to the Government that if those suggestions were to be carried out to their conclusion, the whole of the Salt Laws would have to be revised. The present Bill provided only for an immediate necessity, in order that the trial of salt cases should not be unnecessarily prolonged, and not give unnecessary labor and trouble to the people concerned. Under these circumstances it was proposed that this Bill should be carried through, and that any question of a new general Salt Bill should be separately considered.

The clauses of the Bill were then agreed to without amendment.

THE HON'BLE MR. BEAUFORT moved that the Bill be passed.

HIS HONOR THE PRESIDENT observed that as the Hon'ble Member in charge of the Bill had not given notice of motion for the passing of the Bill, and there was no necessity for precipitancy, he thought the passing of the Bill might stand over to the next meeting of the Council.

The motion was by leave withdrawn.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. SCHALCH moved that the Report of the Select Committee appointed to consider certain amendments in the Bill to amend the law relating to embankments and water-courses be taken into consideration in order to the settlement of the clauses of the Bill; and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The subject, he said, had been so often before the Council that it was unnecessary for him to say any thing further on the present occasion. He had intended to make a few remarks in regard to the petition from the British Indian Association, received since the Bill came before the Council last time. But in looking over the petition he found that the questions mooted in them were more or less affected by the amendments which were to be proposed on the Bill. He therefore thought it better that the consideration of these questions should be deferred until they could be fully considered when the amendments referring to them were brought up.

THE HON'BLE DIGUMBER MITTER asked that the amendments of which he had given notice be taken up and disposed of first, because they addressed themselves so much to the leading principles of the Bill, that if any one of them were carried it would be necessary to recast the whole Bill.

HIS HONOR THE PRESIDENT observed that he was entirely willing to accept the proposition of the Hon'ble Member.

The motion was then agreed to.

THE HON'BLE DIGUMBER MITTER said: I have to move that in Section 6 the words from "or make" in line 5 to "water-course" in line 9 be omitted. I object to these words because they confer a power of interference on the Government Engineer which I believe to be quite repugnant to rights which a proprietor should enjoy in the management of his own estate, and which rights have been very wisely guaranteed to him by the permanent settlement. The question whether the maintenance of a particular line of embankment by a zemindar, where by the terms of the settlement the same is to be done at his own cost, is optional or compulsory, was raised so long ago as 1837, as we find from the copy of a letter from the Sudder Board of Revenue to the Government of Bengal, which, with his valuable notes on the subject of embankments, were placed in our hands by the Hon'ble Member opposite (Mr. Bernard) during the short time he was in charge of the Bill. While alluding to these documents, I cannot allow the opportunity to pass without expressing my thankfulness to the Hon'ble Member for the valuable aid he has rendered in the proper understanding of the knotty question before us, by bringing within our reach, at much labour and research, facts which would have been otherwise unavailable to us, and without which we would have been quite helpless in dealing with many questions of principle or of detail which the Bill under consideration raises. Apologising for the digression, I would beg to submit that amongst other questions the one about the liability of the zemindars to maintain particular lines of embankments engaged the earnest attention of the Board of Revenue in 1837, and I will, with the permission of the Council, read from their letter, dated the 2nd May 1837, the decision come to on the subject and acquiesced in, I should mention, by the Government of the time—

"21. In Chittagong the Commissioner and Collector concur in thinking the zemindars bound by their engagements to keep up bunds and roads; the latter in that part of the country partaking very much of the nature of the former.

"Both officers state that the zemindars do not perform their engagements in this respect, and that there are no means within their knowledge of compelling them to do so.

"22. The Commissioner forwards a copy of kubooleut, such as have been signed by the zemindars of Chittagong at the decennial settlement, in proof of the liability of the zemindars 'to make and maintain the embankments, public roads, and bridges in their several estates under the terms ailbundee, kutteebundee, and poolbundee.'

"23. The Board observe, however, that the kuboolcut forwarded by the Commissioner, which is said by the Collector to be precisely the same in all the zemindaries, by no means warrants the extensive liability which Mr. Harvey would throw upon the zemindars, though it certainly releases the State from the necessity of bearing the expense of embankments. The

kubooleut merely says, 'I will keep up embankments regularly in my estate according to custom. Should I fail to do so, whateverl oss may follow is mine only;' and if there can be any doubt of the meaning of these words, it is cleared up by what succeeds, in which the zemindar binds himself not to withhold his revenue 'on plea of drought, inundation,' and other calamities of a like nature.

"The meaning of the engagement is indeed merely this, that the zemindar might make bunds or not, as he chose, but that if he failed, he was not to claim from the State compensation for consequent loss.

"The Commissioner has extended this, so as to consider the zemindars liable for the construction and repairs of the great military road between Commillah and Chittagong, a road which could only have been made originally at enormous expense, and which is now nearly useless for want of brick bridges, of which in a space of about eighty miles, full fifty of a large and expensive kind are absolutely required.

"Such a construction of the kubooleuts the Board conceive altogether unauthorized, and they have dwelt upon it at greater length, because the kubooleuts of Bengal generally are very similar in words, and, as they think, quite similar in spirit to that just quoted."

The Commissioner of Chittagong has subsequently explained that his opinions on this subject have undergone alteration, and that his view of the liability of the zemindars is very nearly that of the Board.

I have only to read a portion from the valuable notes of the Hon'ble Member (Mr. Bernard) to show that the liability incurred by the zemindars in other districts with respect to embankments is precisely the same as in Chittagong—"And the kubooleuts of the permanent settlement in most parts of Bengal engage that the zemindars shall maintain embankments, and that they shall accept any loss which may accrue from their non-maintenance."

Now, if the zemindar, as we find from these documents, is left unfettered by the terms of his settlement in the exercise of his own discretion in the construction and maintenance of embankments, and if in the proper exercise of this discretion he was subject to no other control than what would be imposed by a due regard to his own interests, the very best control, however, that could possibly be devised, where, may I ask, is the justice of empowering the Government Engineer with the sanction of the Collector, or the Commissioner in case of difference between the two former, to run a line of embankment at any place he liked, and compelling the zemindar or zemindars to contribute to its cost? It cannot be alleged, even if such allegations were of any weight either in law or equity against guaranteed rights accruing from contract, that the zemindars have habitually used this power to the detriment of the public or their own interest; for such an allegation will be at once negatived by the unanimous testimony borne to the fact of those permanently settled estates in Bengal being in a high state of cultivation, it being impossible to point to any tract of land in those estates which remain waste, or which is suffered to run into waste by reason of neglect to protect it by proper embankments.

But however much I may object to the clause in question on the score of injustice, I cannot too sufficiently admire the tact and ingenuity displayed in its insertion in this Bill. Its utility can be only understood when it is considered in connection with Sections 41 and 45. By those sections certain embankments which

have been hitherto maintained at the expense of the State, for valuable consideration at one time considered to be adequate and sufficient, are now for the first time proposed to be abandoned to the zemindars or maintained at their cost in case any of them were required to be taken charge of by the Government Engineer. But many of those embankments happened to protect important towns and cities, such as Moorshedabad for instance; and as in case of their abandonment by Government it will be optional with the zemindars, unless otherwise provided in the Bill, to maintain them or not, and as in many instances it would be to the interest of the zemindars not to maintain them, something must be done to enforce their maintenance, whether they benefited the zemindars or not, so long as they were necessary for the protection of important towns and municipalities: and hence the necessity of the clause in question. It so happens, however, that a question involving circumstances of the same perplexity as those which the framer of the Bill had to confront, was submitted for the consideration and orders of the Board of Revenue about five and thirty years ago. But how different was the spirit then manifested in the solution of the problem, will appear from certain paragraphs of the letter to which I have already referred, and which, with your permission, I will now read:—

"26. In Moorshedabad, as already stated, the Government at present bears the whole expense of the embankment, though, except in pergunnahs Futtehsing and Rokunpore, no engagement exists binding it to such liability. The Commissioner points out this fact, and adding that the kubooleuts of the zemindars contain express stipulations for the repairs of the bunds by them, and that in two estates actual remissions* have been allowed for that very purpose, contends that the whole charge for embankments should be borne by the zemindars in rateable proportions; except only in sudder stations, where he thinks the state which is benefited by the protection of its public buildings should defray a portion.

* Amounting annually to Rs. 2,986.

"27. The Board are agreed with the Commissioner as to the non-liability of Government. They do not, however, agree with him, if, as they apprehend, he would enforce the repair of the bund by the zemindars. They look upon it as completely proved by experience, and experimented upon a very large scale,† that the inundation of the Ganges and its tributary and branch streams in Bengal is not to be repelled, but rather solicited. It is always gradual, always fertilizing, and always tends to raise the level of the country subject to its effects.

† In Rajshahye and Jessore.

"28. In Rajshahye very marked improvement has followed the abandonment of the bunds in 1819, and while much new land has arisen where formerly only existed jheels and swamps, the whole district has gradually risen above its old level, and is accommodating itself naturally and speedily to the inundations of its numerous rivers.

"29. To abandon the bunds in Moorshedabad, with exception to the two pergunnahs mentioned in my 9th paragraph, will, in the opinion of the Board, be ultimately, and at no very distant period, as beneficial as the same measure has proved elsewhere.

"30. For the protection of public stations and cantonments bunds will always be necessary, but their expense should be borne not, as suggested by the Commissioner, jointly by the State and zemindars, but by the State alone."

It would be thus seen that a proposal which by the Government of 1837 was condemned and rejected as being both arbitrary and unjust towards the

zemindars, and for reasons from which it is not easy to withhold one's assent, is again brought forward and sought to be ratified by an Act of the Legislature.

There is yet another aspect, Sir, presented by this question which is deserving of notice. I mean as regards the parties who are made liable to bear the cost of the embankments which may be constructed by the Government Engineer under the power vested in him by the clause under comment. With an utter disregard for the usages, customs, and laws which have hitherto obtained upon the subject, the Bill provides that the cost of such works is to be recovered from the zemindars, who are for that purpose defined in the Bill, as also municipalities, according to the benefits they will respectively derive, or in proportion of the areas of the estates protected and benefited by such works. The zemindars, again, are to recoup themselves from their tenants of a certain class. Now, it cannot be unknown to this Council that it is not every estate in Bengal that requires protection from embankments, but when such work is necessary, it forms a very heavy item of outgoings from the assets of the estate. In the formation of the permanent settlement, the expenditure really incurred in any estate under that head was taken into account when the revenue payable to Government by such estates was determined. For instance, estate A is situate on the bank of a mountain torrent, liable to be swept away without a moment's warning, or on the bank of a salt creek liable to be inundated by the overflow of the creek; such an estate must be protected by proper embankments, the cost for the maintenance of which, along with costs of collection, &c., was taken into account when the Government revenue was assessed upon it. But not so in the case of an estate like B, which is situate further inland, and which, though liable to be inundated, and injured like A by the same mountain torrent or salt creek, was yet exempt from the necessity of maintaining embankments, inasmuch as the embankment of the estate A sufficed to give it the required protection. Consequently, in assessing the Government revenue on estate B, no allowance was made on account of embankments or *poolbundie khurcha.* In fact, the allowance made for embankment charges in respect of the estate A was for the common benefit of A and B, as also other estates similarly situated as B. Now, the effect of the apportionment clauses in the case of A and B is, that the proprietor of A will be relieved from his just liability of bearing the whole cost of the embankment which he incurred for valuable consideration had and received when the estate was permanently settled with him—while the owner of B, who never incurred any such liability, and to whom no allowance had been made on account of embankment charges, will nevertheless be burdened with such charges simply to relieve A. The justice, again, of permitting the owners of A and B to recoup themselves from their ryots, is equally, if not more, questionable. The implied understanding with every tenant in Bengal is, that his zemindar is to afford the customary protection to his land by the maintenance of proper embankments for the whole estate where necessary, and that he is not to be charged additionally for that protection. It is upon this understanding that the settlement in every instance

is made with the ryot, and the rent and bonus payable by him are fixed. Under such circumstances, I think it will be highly improper to arm the zemindar by an Act of the Legislature with the power of enforcing fresh demands in violation of the terms of his contract with the ryot—a contract which, though not in every instance reduced to writing, is yet sufficiently solemn and binding, and which no zemindar can repudiate without committing a gross breach of faith.

As for the difficulties which have to be encountered in giving practical effect to the apportionment clauses of the Bill with any eye to justice, I need not now say much. One of them is at the last moment attempted to be got over by the insertion of two new sections, as I find from the notice of amendments given by the Hon'ble Member in charge of the Bill. But there are others, and very serious ones too, which have scarcely yet suggested themselves to the Hon'ble Member, but which it is not my purpose at present to dilate upon. Perhaps the Hon'ble Member in charge of the Bill will cite the Act for the acquisition of land for embankment purposes passed by this Council in 1866, and the Hooghly and Burdwan Drainage Act, for a precedent in support of the apportionment clauses of the Bill. But the last mentioned Act has scarcely yet been enforced; and as regards the first, it will be difficult for him to mention one instance in which the rule of proportion enunciated therein has been practically tested in finding the relative measure of benefit derivable to land from protective works. I had myself, about two years ago, applied for the construction of a sluice in a public embankment under the provisions of that Act, as the work was to benefit others equally with myself. But I subsequently discovered that the difficulty was so great, either in causing the work to be expeditiously taken in hand, or afterwards deriving any pecuniary relief from the apportionment clauses of the Act, that I withdrew my application and substituted it by another under Act XXXII of 1855, tendering at the same time half the estimated cost of the work. It was evidently in view of these insurmountable difficulties and obligations arising out of contract between the State and the zemindar, or between the latter and his ryots, that the Legislature of 1855, while empowering the Government Engineer to take charge of certain existing private embankments, wisely abstained from ruling that the cost of such works should be recoverable from any others than the zemindar who had hitherto maintained the same. I should also mention that, evidently in view of the contract existing in respect of embankments, the same Legislature also very wisely ruled for the grant of compensation for damages which any one may sustain by reason of this interference with private rights, as a reference to section 9, clause 1, Act XXXII of 1855 will show. So that, Sir, the clause in question is not only unjust in itself, as involving a direct encroachment upon the rights guaranteed to zemindars by the permanent settlement and upheld by successive legislative enactments, but leading to a cumulative wrong, as I have already, though feebly, attempted to show.

THE HON'BLE MR. SCHALCH said, instead of confining himself to the amendment proposed in regard to section 6, the Hon'ble Member had in his

remarks ranged over the whole of the amendments which he proposed to introduce in the Bill. The Hon'ble Member first objected to the power given to the Engineer to construct new embankments, and he then went into the question of the embankments maintained by Government (section 41), and the liability of zemindars to maintain embankments. He then proceeded to the question as to the Government paying half the cost of sluices to be constructed in embankments maintained by Government. And, lastly, he proceeded to remark with regard to the provisions of the Hooghly and Burdwan Drainage Act. MR. SCHALCH thought it would be more easy for the despatch of business if we confined our consideration to the first amendment, and then took up the Hon'ble Member's remarks in regard to the other sections as the particular sections to which they referred came before the Council.

Confining his remarks to the Hon'ble Member's observations in regard to section 6, MR. SCHALCH begged to observe that the present proposal was not a new one. It existed now under the existing Act XXXII of 1855, section 4, clause 3 of which provided that the superintendent of embankments "may also, when necessary, change the line of any public embankment or make a new embankment." We were now merely continuing in more specific terms a power which was already existing. With regard to the exercise of that power, it would appear from the Hon'ble Member's remarks that if the Engineer could not do it on his own motion without further consultation or proceedings, he had only to determine the matter with the Collector. But the Council would see that strict provision had been made whereby notice was to be given to all parties in any way concerned in the construction of a new embankment; that with that notice the Engineer was bound to forward a statement showing the object of the embankment and its position in regard to the estates which it would benefit. Notice was then to be given to all parties concerned, and opportunity was afforded to them for raising objections. It was then the duty of the Collector fully to inquire into the matter and give his opinion in regard to those objections. If the Collector disagreed with the Engineer as to the utility or necessity of the work, the matter could be referred either by the Engineer or the parties concerned to the Commissioner of the division; or if the Collector agreed with the Engineer as to the necessity of the work, an appeal would still lie to the Commissioner, and from the decision of the Commissioner to the Board of Revenue, and, under the general supervision exercised by the Government, from the Board of Revenue to the Government. It would therefore be seen that the power given to the Engineer to construct new embankments was, as far as it could possibly be, sufficiently guarded by the safeguards laid down. It was not to be supposed that all these authorities would be actuated by insufficient motives. If the Engineer, actuated by professional motives, should think an embankment necessary, it was not to be supposed that the Collector would support him on insufficient grounds; and if the Collector supported the Engineer without sufficient grounds, it was not to be supposed that the Commissioner of the division and the Board of Revenue would assent to the proposition. In fact we had thrown over the consent of the Collector a power of appeal which might be

thought by many extremely injudicious and a great hampering of the executive power. MR. SCHALCH did not think any one could deny honestly that cases might arise in which new embankments might be absolutely necessary. The Hon'ble Member had said that the zemindar had a right to make what embankments he liked; that the loss arising from the non-maintenance of embankments would be his own, and that any interference with his right was unjust and improper. Possibly there might be cases in which it would be necessary to interfere. A zemindar might do what was a matter of great interest to himself in a pecuniary point of view, but what might result in great loss or injury to other parties. In cases of that kind we did want the interference of a third party to see justice done. One of the cases which gave rise to the introduction of the Bill was that of a zemindar who made a bund which benefited himself, but did great injustice to other parties, and resulted in inundation spreading largely throughout the adjoining land. Again, the zemindar was in many cases no longer a land-owner, but merely a receiver of rent, and consequently unable to carry out his alleged right to construct a new enbankment even for his own interest. He might possibly have under him putneedars, durputneedars, and other putnee-holders in the third and fourth degrees, who might all object to the zemindar entering on their lands and to the construction of the bund. Consequently, if a new bund was wanted, and if it was left to the zemindar to make it, he might say he had no power to do so; he was merely a rent receiver. If therefore the Council were not prepared to say that in no case were new embankments to be made, the power given in section 6 must be maintained.

He would not go into the other questions upon which the Hon'ble Member remarked; they would be much better discussed when the amendments to which they referred came before the Council. MR. SCHALCH would now urge that the power here given was not a new one; that new embankments might in some cases be necessary; that circumstances might arise in which they could not be made by the zemindar, and that consequently some such power as that proposed to be given by the section under discussion must be placed in the hands of the Engineer. That being his opinion, he should certainly say that the portion of the section proposed to be omitted should be maintained.

HIS HONOR THE PRESIDENT adjourned the further consideration of the Bill to the next meeting of the Council.

The Council was adjourned to Saturday, the 15th instant.

Saturday, the 15*th February* 1873.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble F. L. Beaufort,
The Hon'ble V. H. Schalch,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble B. D. Colvin,
The Hon'ble T. M. Robinson,
The Hon'ble F. F. Wyman,
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor,
AND
The Hon'ble Baboo Digumber Mitter.

SALT ACT AMENDMENT.

On the motion of the Hon'ble Mr. Beaufort, the Bill to amend the Salt Act, 1864, was passed.

MOFUSSIL MUNICIPALITIES.

The Hon'ble Mr. Beaufort moved for leave to bring in a Bill to amend the District Municipal Improvement Act and the District Towns' Act. He said this Bill had been prepared with reference to the remarks which had been made by His Honor the President at the last meeting of the Council in relation to the Municipalities' Bill which had not been assented to by the Viceroy. The Bill which Mr. Beaufort now moved for leave to bring in was a very short one. It was intended to remove three defects in the present municipal law. The first section of the Bill provided that the Lieutenant-Governor might, if he thought fit, direct that in any Municipality created under Bengal Act III of 1864, the Municipal Commissioners should be elected instead of being appointed by the order of Government. The second section empowered the Lieutenant-Governor to delegate to the Municipal Commissioners appointed under Act III of 1864 the power of electing their own Vice-Chairman, instead of leaving it to the Government to appoint him; and the third and fourth sections were intended to empower municipal bodies to expend a portion of their funds on objects other than those enumerated in the laws by which they were governed. As regards the District Municipal Improvement Act, it was proposed to give the Municipal Commissioners power to expend a part of their funds in the establishment and maintenance of schools, the establishment and maintenance of hospitals and dispensaries, and the promotion of vaccination. And as regards the District Towns' Act, it was proposed to allow the Committee to establish and maintain schools where the majority of the Committee was of opinion that any school was required. It was not proposed to make such expenditure in any way

compulsory, but merely to give the municipal body power to devote a portion of the municipal funds to that purpose, if they thought it right to do so. Under Bengal Act VI of 1868 the Municipality was already empowered to expend a portion of its funds on the establishment and maintenance of hospitals and dispensaries and the promotion of vaccination. The exercise of these powers would, under the Bill, be wholly voluntary. He thought that it would be unnecessary to trouble the Council with any further explanations on the present occasion.

His Honor the President said, the hon'ble member in charge of the Bill had explained its object and its character; and it was not necessary that His Honor should add many words of his own to what had been already said. The hon'ble member had told the Council that the object of the Bill was to implement (if he might use such a word) the sanction which had been accorded by His Excellency the Viceroy in regard to the alteration of these provisions of the existing Municipal Acts. The Bill which was placed before the Council was confined as far as possible to the particular provisions in regard to which the Viceroy had intimated in the letter before the Council that he was willing to consider amendments in the present law. There was only one small provision in regard to which the Bill went somewhat beyond the four corners of that letter. The Viceroy had told us that he was willing to consider any proposal for legalising voluntary contributions by Municipalities towards the furtherance of education. In considering the Acts with which the Council were now dealing, His Honor found that whereas neither of the Acts admitted of contributions for education, one of the Acts (and that the Act most lately passed and approved by the Council, namely, Act VI of 1868,) admitted of the application of the funds of Municipalities to the establishment and maintenance of hospitals and dispensaries and the promotion of vaccination. He thought that possibly the Council which passed that law would be willing, as most consonant with the views expressed in their latest enactment, that such voluntary power should be extended to Municipalities constituted under Act III of 1864. And in that view we had ventured to put that provision in the Bill. His Honor had no wish, by any influence of his own, to press that provision on the Council; but if the Council thought proper to accept that provision, he should be glad that such a law should be enacted.

The motion was agreed to.

The Hon'ble Mr. Beaufort said, that as leave had been given to introduce the Bill, he begged to apply to His Honor the President to suspend the Rules, to enable him to move that the Bill be read in Council. The whole question of Municipalities had already been so thoroughly discussed by the Council that he thought it was scarcely necessary to postpone the motion for the reading of the Bill in order again to consider the subject. He proposed to avoid the delay of a week by asking for the suspension of the Rules, in order that the Bill might now be read in Council and published for general information.

His Honor the President said, considering that the principle of the provisions of the Bill had so lately been sanctioned by the Council, and that His Excellency the Viceroy had also intimated his concurrence in that principle,

he thought he should not be wrong in suspending the Rules in order that the Bill might now be read in Council. He would therefore declare the Rules suspended.

The Rules having been suspended—

THE HON'BLE MR. BEAUFORT moved that the Bill be read in Council and referred to a Select Committee, consisting of the Hon'ble Messrs. Bernard, Robinson, Wyman, Digumber Mitter, Rajah Joteendro Mohun Tagore, and the mover, with instructions to report in a fortnight.

HIS HONOR THE PRESIDENT said, before putting the motion to the Council he should wish to say one word. He had already informed the Council that he was not prepared to undertake another general Municipal Bill, nor to attempt reforms of a very radical character. The reforms proposed were confined to one or two limited things. He had considered whether it might be possible so to amend our latest Act, VI of 1868, as to make that Act admit of real self-government. But he had come to the conclusion that the structure of that Act was so entirely of a different character, that its principal provisions were so entirely drawn on other principles and with other views, that it would not be possible so to amend the Act without making a radical alteration in the construction of the Act. So much freedom of self-government was conceded by the Act, that under section 42, in case the Magistrate of the district was the President of the Committee, the preparation of the budget and other functions might be entrusted to the Committee sitting with the Magistrate. Under these circumstances, also, power was reserved to the Commissioner of the division to alter the budget and insert such things in it as he might think fit. The whole Act, therefore, being of a different structure, HIS HONOR had not ventured to propose any alteration of that Act beyond the power voluntarily to contribute towards education, as had been suggested by His Excellency the Viceroy.

Then as regards Act III of 1864 the circumstances were materially different. That Act was not in such detail as Act VI of 1868. It did not contain many express provisions beyond carrying out the somewhat general provisions of the old laws on the subject of Municipalities. Sections 15 and 16 were the provisions in the Act regarding the objects to which the municipal funds might be applied, one being compulsory, the other voluntary; that was to say, Section 15 laid down that certain things—the construction and maintenance of roads, conservancy, and such like—should be done by the Commissioners. Section 16 laid down that certain other things might be done by the Commissioners with the sanction of the Lieutenant-Governor. We proposed to put education amongst the things enumerated in Section 16, that is, to make it a voluntary subject to which the municipal funds might be applied. As regards Section 15, it seemed to HIS HONOR that the Act might so far be ineffectual that although the things to be done were compulsory, no means were provided for remedying the neglect of the Commissioners to do those things. The only remedy placed in the hands of the Government was that the Commissioners might be removed at the pleasure of Government and others might be appointed in their stead. If we parted with this power, it might be necessary to introduce into the

Act express provisions to enable the Government to remedy laches and neglect on the part of the Committee, which would have amounted to a radical re-construction of the Act.

Without some radical re-construction of the Act elective institutions could not be attempted on any large scale, but it could only be done on a small and comparatively limited scale. And being anxious that the trial of the principle of self-government should be made under favorable circumstances, His Honor was ready to risk it so far as to let the Bill err rather on the side of too great freedom than a restriction of freedom; rather there should be wanting some power on the part of Government, than there should be too much power. Although there might be some difficulty in enforcing the provisions of Section 15, he would rather that in the towns selected for the trial of self-governing Municipalities, the elected Commissioners should have too much than too little freedom of action. And if in any degree they failed in performing their duties, we would be repaid by their using in a real manner the freedom of self-government.

There was only one more provision in respect of which His Honor had somewhat hesitated whether he should recommend any alteration. The Council were aware that the District Municipal Improvement Act, III of 1864, provided for the taxation of real property by a house-rate levied on the letting value of the property. He was told by many experienced men that in towns in the interior that system of assessment was difficult of operation; and although the law was nominally carried out it was not really obeyed, and it was suggested that the assessment should be made, not on the real letting value of the property, but on the means and capacity of the householder. It would be for the Select Committee, to whom this Bill would be referred, to consider whether by some means we might not introduce an alternative provision corresponding to the mode of assessment laid down by Act VI of 1868; that was to say, providing that instead of the tax being levied on the letting value of a house, the assessment might be made on householders according to their means and substance, if the Municipality so desired. His Honor did not intend to propose to the Council any such provision, but merely threw out the suggestion: if in Committee hon'ble members thought the change desirable and found it possible without a radical re-construction of the Act, he should be prepared to agree to it.

The motion was agreed to.

EMIGRATION TO THE LABOR DISTRICTS.

The Hon'ble Mr. Beaufort moved for leave to introduce a Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract-labor and service. In doing so, he said hon'ble members might think, from looking at the Bill placed before them, that it was a very long Bill, and would entail a great deal of trouble. He might reassure their minds by telling them that it was only an old friend in a new dress. It was indeed little more than the present Act II of 1870 rearranged

throughout with some modifications. It was found necessary to make some amendments in the law, and the opportunity had been taken to divide the Act into Parts and Chapters. Most of the alterations were of such a nature that they would be most conveniently considered by the members of the Committee, to whom the Bill would in due course be submitted if he obtained leave to introduce it.

As the present law had not been sub-divided into Parts and Chapters, it was somewhat difficult to find the provisions relating to any particular question. The rearrangement of the Act in the Bill was made with the object of clearness and convenience only; but as hon'ble members had not had an opportunity of examining the Bill, he would not trouble the Council with any lengthened remarks on the present occasion. As he believed, however, that none of the members of the Council as at present constituted, were in the Council at the time when the previous discussions on this subject had taken place, perhaps it might be convenient to say a few words regarding the course which legislation had taken. The Council were aware that tea had become an important branch of the commerce of the country. From the first, however, it had been found impossible to carry on this cultivation by indigenous labor: very little was to be had in the tea-producing districts, and the planters consequently found that it was absolutely necessary to import labor from other districts. But the emigration of coolies from Behar or the Sonthal Pergunnahs or Chota Nagpore to districts so far east as Assam and Cachar, was a very different thing from the annual emigration of Bhunwa coolies to the indigo factories; and therefore it soon became necessary that the Government should interfere for the purpose of regulating the emigration of such large bodies of men to districts far from their homes, of which the emigrants were utterly ignorant. It was about ten years ago that this subject first came before the Council, and Act III of 1863 was passed for regulating the recruiting and transport of laborers. After the experience of two years it was found necessary to enact further rules for the protection of the emigrants after they had arrived in the tea districts. A very short time had however elapsed before considerable defects in the law were found, and a Bill was introduced in 1867 for consolidating and amending the law, and was thoroughly discussed in Council, and he believed was passed through all its stages but did not become law. The subject then remained in abeyance for two years more. In 1869 it was again taken up, and a Bill was introduced by the then Advocate-General, Mr. Cowie, with the assistance of the Hon'ble Mr. Eden, for consolidating and amending the law; and very considerable discussion took place, which resulted in the passing of the Act now in force, Act II of 1870. Since the passing of that law two more years had elapsed; and further experience had brought to light certain other latent defects which it was proposed to remedy by the present Bill.

The Bill did not propose any material alterations in any part of the law, but it provided for the amendment of certain small defects. The subject naturally divided itself into three portions: the first was the recruitment of laborers; the second, their transport to the tea districts; and the third, their

protection after arrival at the plantations: and the Bill had been arranged accordingly. The recruitment of laborers had been formerly carried on solely by the agency of contractors, who were men of some substance residing in Calcutta, and who sent up their emissaries to the districts of Behar and other places to collect coolies. Now, these emissaries, called recruiters, were men probably very little known to the contractors; they were men whom the contractors picked up with difficulty to undertake a work involving much trouble, hardship, and annoyance; and they were certainly entirely unknown to the officers of the Government who had to superintend the work of emigration. It had been found, consequently, that the men sent up had had recourse to much deception, and had induced the coolies to emigrate to the tea districts under contracts to labor for fixed periods, on representations which were very erroneous and by promises which were proved to be false. It was not surprising that considerable difficulties had arisen therefrom. Under the present law, the Superintendent of Labor Transport, on the prayer of the contractor, granted a license to recruit, and the recruiter had to produce this license to the Magistrate of the district in which he desired to recruit, and to obtain his countersignature. Practically, the Superintendent made an inquiry through the Magistrate, but the responsibility lay on himself, and it sometimes happened that he did not feel himself justified in refusing a license to a man for whose conduct he had no security beyond the respectability of the contractor. The Bill proposed to take away from the Superintendent of Labor Transport, who appeared in the Bill under the name of Superintendent of Emigration, the responsibility of giving certificates to recruiters, and to vest it in the hands of the local Magistrates, who were required, before they enabled recruiters to go into the interior to recruit, to ascertain that they were men who could be trusted—men who would not hold out false promises of the advantages to be obtained in the unknown land to which the emigrants were about to consign themselves.

Another system of recruiting, more in favor with most planters, and which certainly appeared to be far superior to the system of obtaining emigrants through contractors and recruiters, was by men who were called "garden-sirdars." They were generally laborers who having proceeded to the tea districts under contract, and having worked out the terms of their contract, liking the place and liking their masters, desired that their friends and relatives in their native country should have the opportunity of obtaining the same benefits which they had enjoyed, and with this view undertook to return to their own country for the purpose of recruiting and importing fresh labor. These men having no desire, it might be assumed, to deceive their friends and relatives, and knowing exactly the circumstances of the tea plantations, the privations and benefits thereof, were much better able to lay before the recruits the exact state of things than the recruiters employed by contractors, who had personally no acquaintance with the tea gardens. It was reasonable therefore to presume that a cooly recruited by a garden-sirdar would proceed to a tea district with a more clear understanding of what was before him than a cooly recruited under the other system. But there were certain

drawbacks to the garden-sirdar system, and a chief difficulty existed in regard to the transport of emigrants. Where a contractor had received a certain number of coolies at his depôt and proposed to despatch them to the tea districts, they were forwarded under a system of rules through the officers residing at the ports of embarkation, such as Kooshtea and Goalundo. The coolies were embarked generally on board steamers where the supervision was complete, and where during the whole progress up the river they were more or less subject to the inspection and supervision of the local Magistrates. But where a garden-sirdar, who was not allowed to recruit more than twenty laborers, desired to carry his men to the tea districts, he sometimes found considerable difficulty in providing the means of transit. To carry them to Assam in country boats was exceedingly difficult and expensive, and to do so by land was impossible. The garden-sirdar therefore generally desired to put them on board the steamers plying on the river, and willingly paid for their passage. If such laborers held a certificate of registration, the local officers could not prohibit their embarkation, although they knew nothing of the state of their health. Now, during the progress of such a party of emigrants to the port of embarkation, the cholera might have been amongst them, and they might carry the seeds of it on board; and it was not therefore a matter of surprise to find that the cholera which had decimated the emigrants on board a steamer proceeding to Assam, had been traced to the garden-sirdar's coolies, who were allowed to embark at the last moment without a bill of health, and of whom the local officers had no previous knowledge. It was proposed, therefore, to invest such local officers with the discretion to detain such parties of emigrants until they had been able to satisfy themselves that their embarkation on board a vessel conveying other emigrants would not endanger the safety of others, and to avoid, so far as any precautionary rules could avoid, such frightful results as were to be found on record.

It was also proposed to provide that Government should have power to require contractors to establish and maintain hospital depôts at Calcutta and at the ports of embarkation, whenever such a measure might seem requisite, so that if the cholera or other infectious disease were to break out amongst coolies awaiting transport, the sick might be removed to such places for proper treatment, and segregated from the others.

Another point to which Mr. Beaufort wished to refer was this. By section 10 of the Bill it was proposed to give the Lieutenant-Governor the power of declaring that emigration to a particular district should entirely cease for a certain period. If at any time disease were prevalent in a tea district or in a district where recruiters were at work, or if experience should show that emigration to a district at one particular season of the year induced serious disease, it might be expedient to prohibit emigration for a certain period. The power to do so was specifically declared by section 10.

Another point to which he would allude was that contained in Chapter XIII of the present Bill, namely, the power to close an unhealthy garden. Under certain sections in the present Act, when much sickness had occurred in a

garden, power was given to the local officer to convene a committee, who were to proceed to the spot and inquire whether such garden was fit for human habitation. But difficulties had occurred in the working of those sections. The committee had sometimes found that, although they were unable to account for the great mortality, they were not in a position to certify, in the terms of the Act, that the garden was not fit for human habitation; and therefore the object of the law had failed. There had also been some difficulty found in convening committees. The sections of the Bill introduced in Chapter XIII were intended to provide, first, for enabling the committee to be convened with more ease; and, secondly, to give to the Government power to declare that where the mortality had arisen above a certain percentage during the past three years, the garden should be closed. That would prevent any failure in the obvious object of the present Act, of which object the Council would, he was confident, approve.

Then, as regards laborers who had worked out their time, that was to say, the term of whose contract had expired. Under the present law the position of time-expired laborers was somewhat indefinite. It was proposed to declare that the moment a man had served out his time, he was to be wholly relieved from all the provisions of this law. Under the present law, although the term of contract had expired, if a laborer remained with his employer, he was still subject, as was his employer, to various provisions of the law. Considerable difficulties and great discontent had arisen from this state of the law. The subject was discussed at much length when Act II of 1870 was before the Council, but it seemed unnecessary to revert to that discussion on the present occasion. The Bill provided that when the term of contract had expired, the laborer and employer should be entirely relieved from the obligations which under the law the contract imposed, but at the same time it gave to the laborer full liberty to re-engage himself if he so pleased. He might make a new contract; and Mr. Beaufort understood that a large proportion of laborers who worked out their time did not wish to return home, and did enter into fresh engagements with their employers or in other gardens. It was therefore declared that fresh contracts might be made without restriction; but at the same time it was provided that where the contract extended to a period of six months, such contract should be registered, and that in such case both parties to the contract should be subject to certain provisions of the law, namely, those relating to the regulation of labor, to house accommodation, food, medical attendance, and so forth. It was obviously right that these men, who were scarcely able to protect themselves, should have the opportunity of placing themselves under such rules if they pleased. But if they wished to be free laborers they would only have to reduce the period of contract within six months, and then they would be wholly untrammelled by any of those provisions of the law. In connection with this part of the Bill it was proposed to make what was in reality a new law for regulating contracts of service and labor. In Part IV provision was made for the summary trial of complaints by employers for neglect of work, and of complaints by laborers for arrears of wages. That Part would apply only to those contracts to which

the previous Parts of the Bill were not applicable. At present Act XIII of 1859 had been extended to the contracts of service made in the tea districts. But Mr. Beaufort thought it was admitted that the application of that Act to such cases was scarcely in accordance with the spirit and intention of the law. It was moreover a one-sided law, and did not sufficiently provide for these cases. Therefore it was proposed to give the Magistrate a summary power of hearing the complaints of both parties and of summarily adjudicating upon them.

He had omitted to say that in arranging the Bill he had introduced a somewhat new nomenclature. It was proposed that the chief officer employed in the superintendence of emigration should be called the Superintendent of Emigration, and that he should have as his subordinates certain medical inspectors and certain embarkation agents at the ports of embarkation. That referred to those parts of the law relating to recruitment and transport, and did not affect the provisions regarding the inspection and protection of laborers on the spot, which had not been altered.

The only other matter to which he need refer now, was contained in those sections of the Bill which provided for the extension of the law. Part IV of the Bill, to which he had just alluded, and which contained rules for the summary trial of questions arising between master and servant, might have a more general application, and it was proposed to give the Government power to extend those provisions to any other districts. The Part had been framed with the view of providing a general law for regulating the relations between employer and employed, and might be found useful in other districts. But an extension of greater importance than that was to be found in Section 13, which enabled the Lieutenant-Governor to declare, by notification published in the Gazette, that the emigration of natives to any province in British India, and to any place in Bengal other than the tea districts, should be regulated by the provisions of this Act. The emigration of natives of India to the West Indies and foreign countries is regulated by Act VII of 1871 of the Imperial Legislature; but that Act does not apply to emigration to any portions of British India. Now, if it was desired to import laborers from India into British Burmah for instance, there was no law applicable. It was thought, however, that the recruiting of emigrants in Bengal should be regulated by one set of rules, whether such emigrants were intended for districts which were within the territory subject to the Government of Bengal, or for districts situated in some other province. Section 13 had been framed with this view. If the Council of the Governor-General would accept it as sufficient, then whenever it was desired to regulate emigration to British Burmah or other place, the Lieutenant-Governor would be enabled to declare that this law was applicable to such emigration, and it would be left to the Imperial Legislature to provide rules for the care and protection of coolies from the time when they left Bengal.

The provisions which Mr. Beaufort had touched upon were those which involved the most material alterations of the existing law, and he thought he might leave the consideration of all other matters for the present. He would now ask for leave to bring in the Bill.

His Honor the President said, he thought it might be well, in order that the Council might labor under no suspicion of not sufficiently directing public attention to the subject of one important change that we were making in the existing law, to say that it seemed to him the hon'ble member in telling us that all the changes were of a minor character, had perhaps not sufficiently placed before the Council the importance of the change proposed in regard to time-expired laborers. In His Honor's opinion that was a considerable change. The present law was this, that any imported laborer in these districts who had completed his period of service, if he should in any form contract again, should be subject to all the provisions of the law. Now, that provision of the law did not provide any form of contract in such cases. The consequence was that it had been considered, and His Honor believed rightly considered, that even a verbal contract was sufficient to bring a laborer under the provisions of the law. That being so, a verbal contract bringing the laborer under the provisions of the law, the result was that under the present Act most time-expired laborers were still under the law. But in practice it was found difficult to carry that out, and for this reason, that as there was no registration and no written contract, it was almost impossible for the district officers to say what laborers were under contract and what laborers were not under contract. They had told us that they were wholly in ignorance as to what proportion of time-expired laborers were under the law; that the returns of births and deaths were vitiated because they did not know how many men re-contracted and how many did not. When we came to consider this matter, it seemed to His Honor and his advisers that there was a considerable and wide distinction between coolies imported and coolies engaged on the spot without being imported. The Council were aware that a cooly imported under contract was imported at a considerable expense to the capitalist who imported him, and it had been considered, and probably wisely considered, that having regard to that expense, it was necessary the capitalist should be protected by special provisions in that behalf; that it should be made penal on the cooly to fail to fulfil his contract; and that speedy and summary remedies should be given for the enforcement of the employer's rights. On the other hand, the cooly was a simple and ignorant man, imported into a country of which he was entirely ignorant. He did not know one district of Assam from another. It might be his fate to go to a good garden or to an unhealthy garden: it might be his fate to serve under a good master or under a master who was not good. Under these circumstances the law wisely laid down that the cooly, who was the object of special provisions in the interest of his employer, should also be protected by special provisions in his favor. But when we came to the question of the time-expired laborer who, knowing the country and knowing the nature of the work in which he was employed, chose to enter into a fresh engagement with his employer, the circumstances were materially different. In that case there had been no advance of capital which entitled the employer to the protection of those special provisions, and the cooly was not so ignorant as the cooly who came into the country knowing nothing about the garden to which he was going. Under these circumstances you had an employer who engaged

men who were on the spot and who knew the circumstances under which they labored, and therefore those stringent provisions of the law were not necessary for their protection. On the other hand, these coolies were mixed up with the imported coolies under contract, and we thought it right and good for all parties that a summary law should be passed for the regulation of certain matters between them and their employers. We had taken care that the most stringent provisions of the law were not applied to these laborers or their employers, but certain provisions of a less stringent character were applied to both the employers and the employed.

The hon'ble member in charge of the Bill had told the Council that Act XIII of 1859, which was originally intended to apply to artisans in the presidency towns, had been extended to some of the labor districts. He had also said that doubts were entertained as to the applicability of this law, and we thought it right to substitute a somewhat summary law instead, under which the cooly who was not treated fairly, who was not paid his wages, should have a summary means of redress; and the employer who was not treated fairly, whose contract was broken, should also have summary redress. This question had given rise to considerable discussion. The Council, and the Committee to whom the Bill would be referred, would no doubt carefully scrutinize the provisions of the proposed Bill. His Honor's impression was that under the circumstances a summary remedy should be given; that the foreign cooly in Assam should be placed under some protection in regard to hospital accommodation and other matters; and that a summary provision for the recovery of wages should be given in a legitimate way, and not by the doubtful twisting of the provisions of Act XIII of 1859. That was one point on which a somewhat important change was proposed to be made in the existing law.

The hon'ble member had explained some other points in regard to which provisions not of a radical character were proposed. He had explained that it was proposed to alter somewhat the law of recruiting. That had been suggested by experience of an extremely practical character. Considerable discussion had arisen in regard to the emigration of laborers to the colonies. The law in regard to emigration to the colonies and to the tea districts was with respect to recruiters on the same footing. One was taken from the other. In regard to emigration to the colonies, licenses were given to recruiters at the instance of the emigration agents in Calcutta. His Honor had no hesitation in saying that that power had been used in a very mistaken manner. It was the custom to give licenses to recruiters of whom the agents knew absolutely nothing. The sub-agents sent down the names of the recruiters, and the agents got them licenses. The consequence was that considerable abuses had resulted, and the Government and Magistrates of the North-Western Provinces in particular brought to notice several scandals which had resulted from the abuse of those powers.

His Honor thought it his duty, as administering the executive government of these provinces, to alter that state of things, and to insist that the Protector of Emigrants should ascertain from the Magistrates of the districts in which the recruiters carried on their recruiting that the men whom they were asked

to license were of respectable character. Considerable agitation was caused by the action which he had found it necessary to take, and we had received somewhat violent protests from the colonies on the subject, and the matter was thoroughly sifted and discussed. The result was that it was considered essentially necessary that it should rest, not with the distant emigration agents, but with the Magistrate of the district, to decide whether the men proposed to be licensed as recruiters were or were not respectable men to whom this function of recruiter might safely be entrusted.

There was another point of considerable importance which had been alluded to by the hon'ble member. He had told the Council that the law with regard to dealing with unhealthy gardens had not been found adequate for the purpose. His Honor confirmed that statement. The existing law laid down that in case any garden was found unfit for human habitation, a committee should be convened on which there should be at least one employer of laborers, and the Government should be represented by the Magistrate, the inspector of laborers, or the medical officer of the district. It might often happen that an ignorant cooly might be taken to such a garden where the chances of living were against him. On the other hand, it was sometimes difficult for the committee to say, however honestly inclined, that an unhealthy garden was unfit for human habitation. There were persons who could live in the most unhealthy and malarious places. It might be that the garden was not absolutely unfit for human habitation, and yet it might be a cruel wrong to force the laborers to remain and labor in it when the mortality might be 8, 10, or 12 per cent. Therefore we thought it necessary to define the circumstances under which the garden should be pronounced so unhealthy as to justify the interference of Government in behalf of the laborers. We had taken a standard which had met the approval of the Secretary of State for the Colonies in regard to some of the colonies in which this question had arisen. When for a series of years the mortality in any garden had exceeded 7 per cent., it should be considered to be a place in which the contracts of laborers should not be enforced. The hon'ble member had used the term "closed;" that was a term which might be the subject of some misconstruction. What was meant was that the garden should be closed to imported laborers. If the proprietor of the garden could induce coolies on the spot—natives of the country, who could resist the climate—to engage for labor in that garden, he would be perfectly free to carry on the garden. It was in such places that a large number of indigenous laborers would be valuable to the tea-planter in consequence of the close of the garden to imported laborers, but the proprietor must pay such prices for his labor as would induce indigenous laborers to work. We proposed a standard of 7 per cent., and declared that mortality in excess of that proportion should be taken as the guide to determine whether or not a garden was unhealthy.

His Honor need not allude to any minor points at this stage. In most other respects the Bill was, as the hon'ble member expressed it, an old friend with a new dress. We would not proceed with the Bill in a hasty manner. We would give the Council and the public due time for its consideration. He

proposed that the Bill, if leave were given for its introduction, should be published in the Gazette, and proceeded with in due course from stage to stage. He had no doubt that hon'ble members who were interested in the subject would give the Council their advice, and that we should ultimately arrive at a satisfactory conclusion.

The motion was agreed to, and the Bill ordered to be published in the Gazette.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. SCHALCH moved that the report of the Select Committee appointed to consider certain amendments in the Bill to amend the law relating to embankments and water-courses, be further considered in order to the settlement of the clauses of the Bill. In doing so, he said he might observe that at the last meeting of the Council the report of the Select Committee was brought under consideration, and the Council had so far proceeded as to consider an amendment proposed by the hon'ble member opposite (Baboo Digumber Mitter) in regard to Section 6, with the understanding that the remaining amendments proposed by the hon'ble member should be first considered, inasmuch as he was of opinion that if they were carried they would involve such an important alteration in the Bill as to render it necessary that the Bill should be recast.

The motion was agreed to.

The adjourned debate on Baboo Digumber Mitter's motion in Section 6 was then resumed.

THE HON'BLE BABOO DIGUMBER MITTER said,—"With your Honor's permission I would address a few words in reply to what has been advanced by the hon'ble member in charge of the Bill against the amendment I moved at the last sitting of the Council. The hon'ble member commenced by observing that I had not confined myself to the amendment I proposed with respect to Section 6, but had taken that opportunity of commenting upon several other sections of the Bill. True enough, but the hon'ble member did not undertake to state that the sections I commented upon had no connection with the clause I objected to; nor do I think he would deny that those sections were the necessary corollaries of the clause in question, and would have had no place in the Bill but for that clause. How could I, under the circumstances, help alluding to provisions in the Bill which, in an attempt to mitigate the injustice involved in the clause objected to in one direction, committed a grosser one in another, and where again such injustice was least merited? and that is precisely what the apportionment clauses of the Bill are calculated to effect. If, again, I have made allusion to an Act of this Council passed in 1866 and the Hooghly and Burdwan Drainage Act, it was also in connection with the same provisions of the Bill. The hon'ble member next said that the clause I had objected to was not an innovation on prior enactments, but was simply a re-enactment of Clause 3 of Section 4 of Act XXXII of 1855. With every deference to the hon'ble member, I must say that the wording of the clause in question, considered in

connection with the other parts of the section, will hardly bear that construction. The clause provides that the Superintendent of Embankments 'may also, when necessary, change the line of any *public embankment*, or make a new embankment.' I am perfectly aware that any embankment taken charge of and maintained by the officers of Government would constitute a public embankment under the definition given in the Act. But as Section 4 lays down for the first time under what circumstances private embankments are to be taken charge of by the officers of Government, the distinctive character of the two classes of embankments is necessarily preserved and expressed in this section by the words *private* and *public* embankments. For instance, Clause 2 of the section provides that the Superintendent of Embankments 'may cause any private embankment which endangers the stability of a public embankment,' &c., &c. I therefore respectfully contend that the words 'public embankment' used in Clause 3 is meant to be an embankment maintained at the expense of the State, and the words 'new embankment' immediately following it, is a new *public embankment*, and not *private embankment*. If there should still be any doubt in the matter, it is cleared up by Section 6 of the Act, in which provision is made as to the party from whom the cost of private embankments taken charge of by the State is to be recovered.

"The section runs thus:—

"VI. Whenever the Superintendent of Embankments shall hereafter cause an embankment, which any person is bound to keep up, to be taken charge of by the officers of Government, the expense of keeping up such embankment shall be charged to such person, provided that the amount so charged shall not exceed the reasonable expense of keeping up any embankment of the size and description which such person was bound to keep up, notwithstanding the embankment shall have been enlarged or improved by the officers of Government."

"Now, in this section no provision is made for the recovery of the cost of a new embankment, which must have been done if the 'new embankment' mentioned in Clause 3 was meant to be one which was to be maintained at the cost of the zemindar. But while Section 6 was quite silent upon the subject of the new embankment mentioned in Clause 3, Section 7 provides for the payment of compensation by the State for injury sustained in the exercise of any of the powers vested in the Superintendent of Embankments by Clauses 3 and 4 of Section 4, which I need not say would hardly be compatible with the supposition that the works mentioned in Clause 3 were those which were contemplated to be done at the cost of the zemindar. I therefore cannot but conclude that Clause 3, Section 4, Act XXXII of 1855, provides for works which are to be maintained at the cost of the State and not of the zemindar, as is contended by the hon'ble member; and consequently the clause objected to by me is not a re-enactment of Clause 3, Section 4, Act XXXII of 1855. Passing over that portion of the hon'ble member's speech wherein he warmly expatiates on the different checks he has provided against an abuse of the power vested in the Engineer by the clause in question, I would proceed on to that part of the hon'ble member's speech wherein an attempt is made to show

the necessity for the clause in question. He first mentions the fact of a bund or dam thrown up by a zemindar of the 24-Pergunnahs across a water channel, which benefited him, but injured others by causing their lands to be inundated. I really do not see what connection this has with the clause objected to. The act of the zemindar complained of was calculated to obstruct the drainage of the country, and hence summary power was intended to be given to the Engineer for the removal of such obstructions. The Bill makes ample provision for the same, and nobody objects to it. But the object of the clause in question is something totally different. It provides for the making of any embankment, wherever the Engineer liked, at the cost of the zemindar, which, so far as the drainage is concerned, it must to a certain extent obstruct rather than facilitate, even if provided with sluices. I do not therefore see what the hon'ble member has gained by citing the case of the 24-Pergunnahs zemindar. The hon'ble member then says that the zemindar may be opposed in making an embankment to run through the property of his putneedar, durputneedar, &c., and hence the necessity of Government interference in the matter. But I do not see the necessity of a zemindar's passing an embankment at all through the property he has given away in putnee. The putneedar is to make the embankment, and not the zemindar. In case the zemindar should have given away a solitary mouzah in putnee out of many, and if it so happened that for the protection of the whole property the embankment must run through the putnee mouzah, power in such cases is always reserved, when the putnee arrangement is made, for the construction of such embankment by the zemindar, and the putneedar is made to contribute a portion of the expense. But while the hon'ble member has indulged in supposititious cases, which however do not at all make out the necessity, he does not state a single instance of any representation having been ever made by a zemindar to that effect, nor is there anything before the Council proving the actual necessity for such a provision; and unless the necessity is clearly made out, this Council will not be justified in enacting a law which interferes with private rights, and is opposed to the decision come to by the Government of 1837."

THE HON'BLE MR. SCHALCH said, he did not know how far he was prevented by the Rules of the Council from offering a few explanations rendered necessary by the remarks which had fallen from the hon'ble member opposite (Baboo Digumber Mitter). He believed that the strict rule as to each member speaking only once in a debate did not apply to amendments moved during the settlement of the clauses of a Bill.

[HIS HONOR THE PRESIDENT observed that it was desirable that the hon'ble member in charge of the Bill should have an opportunity of making any explanation he considered necessary.]

THE HON'BLE MR. SCHALCH said, the hon'ble member's amendment brought up two questions for disposal. One was the power of the Engineer to make a new embankment, and the other was as to the person who should pay the cost of such work. The question of cost did not fall within the purview of this section, but came within a subsequent section which referred to the mode

in which payments of all costs incurred were to be recovered, and he thought it would be better, if the hon'ble member objected to the cost of these works being thrown upon the zemindar, that he should move an amendment to that effect in that section. MR. SCHALCH would now confine his remarks strictly to the power of the Engineer to make an embankment. Referring to the existing law, he thought nothing could be clearer than the power of the Engineer to make a new embankment under certain conditions as to publication, and so on. It was distinctly declared that the Engineer could make new embankments. As to how the costs incurred in so doing, and the compensation to be awarded, should be assessed, was a different question. If the Engineer had before the power of making new embankments, that power should be maintained. And even if the zemindar was desirous of making a new embankment, it was necessary that the opinion of a professional person should be taken, to see that the embankment was so made as not to injuriously affect the interests of third parties. That power was given by the present law, and should be retained under the new law. MR. SCHALCH would not at present refer to the question of the apportionment of costs. That question could be better discussed when the Council came to a subsequent amendment of the hon'ble member in regard to throwing on the Government the burden of maintaining at their own expense all embankments now maintained by them without regard to the question how far they were obliged to maintain them, and how far reasons of State might induce them to maintain embankments which they were under no obligation to maintain, or how far they should maintain them merely because those who should do so would not maintain them. However, MR. SCHALCH thought it was necessary that we should have a professional officer to determine that question. The hon'ble member had mistaken the reference made to the case which gave rise in some measure to the Bill now under consideration. MR. SCHALCH meant to refer to that case merely as an example of the necessity which existed that a third party should be entitled to interfere, in justice to other parties whom the work about to be constructed might be calculated to injure. The hon'ble member had also said in the rest of his observations that although the zemindar, by the process of infeudation, might not often be able to make an embankment which should run through the land of his putneedar, yet that when an estate was given in putnee the liability to maintain embankments devolved on the putneedar. That was always the first argument which a zemindar brought forward to evade his responsibilities. The hon'ble member seemed to think that it was quite within the competency of the zemindar to transfer his liabilities to a third party by contracting with such person to perform the services which the zemindar was bound to the Government to perform. So it might be as between the zemindar and a third party. But it was quite a different thing as to how far the zemindar was authorized to throw over the liabilities which the Government had thrown upon him. The Government looked to the zemindar, and he could not say—"I have thrown the liability on this man, who might perhaps be a man of straw. I reap the benefit, but I don't wish to burden myself with the liability. I have nothing more to do with it." It was a common practice to condition with the

putneedar that he should pay the Government revenue, but MR. SCHALCH had never seen the argument carried to the length of saying that the zemindar who let his estate in putnee on such a condition, had thereby freed himself from his liability for the payment of Government revenue. The zemindars seemed to acknowledge that the liability for the payment of revenue did rest with them, and could not be transferred to a third party. In the same manner, although the zemindar might contract with a third party for the maintenance of embankments, he must still remain the responsible person, and he might fairly plead that although the responsibility rested with him, the parties with whom he had contracted would not let him fulfil his obligations. The real question at issue was as to the liability of the zemindar to maintain embankments; but that question would be discussed more appropriately in connection with a subsequent amendment of which the hon'ble member had given notice. Unless the Council were prepared to say that in no case were new embankments necessary, they must be prepared to admit that if new embankments were necessary, a professional person must, under the safeguards provided by the Bill, which obliged the Collector to see justice done to all parties, have authority to determine what works were necessary.

HIS HONOR THE PRESIDENT said, as he understood the amendment it amounted to this, that the hon'ble member would take altogether out of the Bill all power to make new embankments. He would restrict the provisions of the Bill to existing embankments and take away all power to make a new embankment. After having heard what had fallen from the hon'ble member in charge of the Bill, HIS HONOR was quite convinced that the present law did give the public officers power to make new embankments. Therefore, the effect of the amendment would be retrograding, and would take away from the public officers the power which they now had. What he understood had rendered a revision of the law necessary was, that while under the existing law the power to make a new embankment did exist, no definite provisions were laid down as to the parties by whom the cost of such works should be borne: the present law was not sufficiently definite to enforce that obligation, and did not make sufficient provision for an equitable apportionment of the cost among the various parties interested in the construction of the work. If the amendment were accepted by the Council, the result would be that whenever by a change in the course of rivers or streams a new embankment was rendered necessary, we should be quite powerless to provide for the safety of the country. It was well known that great and frequent changes took place in the features of the country; that the course of rivers changed, and the features of the country changed with the course of great rivers. Embankments which were sufficient for the protection of the country one day were wholly useless another day, and the country could only be protected by new embankments. It would be most dangerous and might be most destructive to the country that this power should be taken away from the officers of Government. If this power were to be taken away, if the hands of the Government were to be so much tied down in the future, the Bill might be called a Bill to relieve the zemindars from their existing obligations,

and to enable them to cast on their sub-tenants obligations which did not now attach to such sub-tenants. It was not desirable that this Bill should be passed with a one-sided character. His Honor thought it necessary that this power should rest in the hands of the officers of Government, and should be regulated by such limitations as the Council thought fit. The hon'ble member had alluded to the summary character of the apportionment clauses, but that question would be properly dealt with when we came to the consideration of that portion of the Bill. The present amendment being of a sweeping character, having for its object wholly to take away the power to make a new embankment, His Honor submitted that it was inexpedient to adopt it, and he trusted that the Council would not accept it.

The motion was then negatived.

The Hon'ble Baboo Digumber Mitter said,—"In stating my grounds for the next amendment on the paper, I cannot avoid entering into a short review of the various changes which the Bill, as originally introduced, had undergone before it assumed its present form. The Bill, as it was originally introduced, contemplated mainly, as I understand it, to vest the Engineer with summary powers for the removal of obstructions to the drainage of the country, and as it closely followed in its leading principles the prior enactments on the subject, especially Act XXXII of 1855, I saw no objection to support it at its first reading. In committee, however, its leading principles were entirely changed, even to the extent of totally absolving Government from the obligation of maintaining any embankment at the cost of the State. The Select Committee made their report in August 1871, and the Bill as amended by them was published in the *Calcutta Gazette*. It was then that petitions poured in from different quarters, and amongst others the British Indian Association sent up their protest on the subject. The first notice taken in the Council of the labours of the Select Committee was in the speech of our President, delivered on the 9th December 1871, in opening the session for 1871 and 1872, and it was done in these memorable words:—

"'A suggestion had been made that the Government was anxious, by means of the Bill, to rid itself of obligations which it undertook in the last century, at the time of the decennial settlement. Speaking for himself, he might say that the Government had no such wish; his impression was, as the hon'ble member in charge of the Bill would probably tell the Council, that any obligations distinctly undertaken by the Government as part of the basis of the decennial settlement, which afterwards became the permanent settlement, should be maintained intact, and the Government should not attempt to rid itself of those obligations. That was a point which would be fairly and impartially considered, and fairly and impartially laid before the Council.'

"In the sitting of the Council held on the 9th of March 1872, the Bill, after an able and exhaustive speech from the hon'ble member opposite, Mr. Bernard, was referred back to a Select Committee with instructions, I may with correctness say, so to amend the Bill as would maintain intact the obligations undertaken by Government in the matter of embankments. In what manner those instructions have been carried out, and how far the assurances of Your Honor have been

given effect to, would appear from Section 41. In that section mention is made of a schedule which is said to contain a specification of all the lines of embankment which after the passing of this Bill will be maintained at the expense of Government, and none that did not find a place there will be so maintained. How this important document was prepared, and whether it contains all the embankments which the State has undertaken to mantain at its own cost, and whether it does not contain others which the State is not at all liable to maintain, are questions which, though a member of the Select Committee to whom the Bill had been referred for settlement and report, I am yet totally unable to answer, and I may with confidence say the same for the other members, not even excepting the hon'ble member in charge of the Bill himself. For though the Bill with the schedule annexed comes before the Council with the sanction of his name, yet I doubt very much that he would venture to assure the Council that the schedule embraces nothing more or less than what it should embrace. One thing, however, is quite certain, that whereas Government now maintains at its own cost 1,329 miles of embankment, it would have to maintain only 864 miles if the Bill submitted by the Select Committee passed into law with the Schedule (E) preserved in all its integrity. I find the first figure from the notes of the hon'ble member opposite (Mr. Bernard), and the second by adding up the measurement given of the different lines of embankment in the Schedule (E). Now, Sir, the letter of the Sudder Board of Revenue, which I have so often cited, shows that the question of what lines of embankment Government had undertaken, and should on that account be maintained at the cost of the State, was fully gone into in the year 1837. The different points of inquiry necessary to arriving at a correct solution of the question had been carefully laid down, and a decision was come to after a most searching and thorough investigation of the subject in all its bearings, and we find that that decision has ever since become the basis of all Government action, executive or legislative, on the subject of embankments. It is to be presumed, therefore, unless in any one instance it is judicially proved to be otherwise, that the mileage of embankments (1,329) now being maintained at the expense of Government represents, as far as such works can represent, the total of the different lines of embankment which the Government of 1837, after a sifting inquiry, pronounced to be those which should be so maintained; and yet in the preparation of the schedule in question the Government decision appears to have been treated as if it was not worth the paper on which it was recorded. For instance, I do not find the embankments protecting the city of Moorshedabad on either side of the Bhaugeruthee, included in the schedule, though the question whether those embankments should be maintained at the expense of the State or that of the zemindars had been specially raised, and decided by the Sudder Board of Revenue that they should be maintained at the cost of Government, and for reasons which it is not very easy to controvert, as I have already had occasion to show whilst stating my grounds for the first amendment. But while the Moorshedabad embankments are thus summarily and unceremoniously excluded from the schedule, other lines are included in it whose presence there is quite

irreconcileable with any possible principle which the hon'ble member in charge of the Bill might have adopted for excluding from, or including in, the schedule, embankments which should be maintained at the cost of the State. As the schedule, therefore, cannot be depended upon as containing all the embankments which ought to be maintained at the expense of the State, I object to its being received by this Council and formed the basis for legislation on the subject; and relying, in view of the assurance already given, that it cannot be the wish of Your Honor to depart from the liability already incurred by Government to maintain certain embankments at the expense of the State, and as the embankments in respect of which such liability had been incurred were, after much inquiry and careful consideration, determined by the Government of 1837, I beg to move that Section 41 of the Bill be omitted and the following substituted in lieu thereof:—

"'The provisions in this Part contained shall not apply to any embankment which at the time of the passing of this Act is maintained at the expense of the State, nor to any embankment which may hereafter be erected for the protection of any land which is, at the time of the passing of this Act, protected by any embankment maintained at the expense of the State.'"

THE HON'BLE MR. SCHALCH said there were two very serious objections to the adoption of the amendment moved by the hon'ble member. But before proceeding to state those objections, he would refer to what had been said by the hon'ble member. MR. SCHALCH must say that he did not hear the hon'ble member's speech so distinctly on the last occasion as he should have done, and it was not until he saw the speech reported that he discovered that his remarks had more reference to the question then under consideration than MR. SCHALCH had at the time supposed. He hoped, therefore, that if in anything he mistook the hon'ble member's meaning on the present occasion, he would be kind enough to correct him. The hon'ble member's first objection was that since its introduction the Bill had imported a very different principle, and that the Bill as introduced did not cast upon the zemindar, so distinctly as the Bill now did, the cost of constructing new embankments. If that was the intention of his remarks, MR. SCHALCH found, on reference to the former Bill, the following clause:—

"The cost of the construction, maintenance, and repairs of all works executed under the powers and provisions of this Act, or any of them, shall be borne by the owners of the lands benefited thereby, and shall be recovered from them as if the same were arrears of Government revenue."

If the hon'ble member objected to that as a change made in the Bill subsequent to its introduction, it appeared to MR. SCHALCH that there really was no change. In introducing the Bill on 17th December 1870, he said that the object of the Bill was, first, to give power in cases of emergency to interfere at once in order to prevent inundations; secondly, to make more definite the definition of the word "embankment," and to include within it many works which, although not, strictly speaking, embankments, were intimately connected with them, and the maintenance of which was

essential for the efficient condition of embankments; and, lastly, another and one of the most important objects sought to be attained was the better apportionment of the expense of the construction and maintenance of embankments, which the proprietors of estates in the vicinity of such embankments were bound to provide. So that it would be seen that the Bill originally, and the remarks introducing it, did provide for a change in the system, namely, that the parties who bore the expense in future should be the parties who derived benefit or protection from the works. When that Bill was submitted to a Select Committee, they struck out the provision which existed in it, and which was taken from the old Act, keeping up the existing obligation of the zemindars. They threw out that provision, and submitted the Bill in this form, that the entire liability rested not so much on the previous specific engagements, but in proportion to the benefit and the protection received from embankments. When that report was submitted to the Council, it was observed by the British Indian Association, in a very important and temperate petition, that the Government could, under cover of the Bill, relieve itself from all the obligations it had undertaken to maintain embankments. But the Government had no desire to evade their obligations. His Honor the President said on that occasion that there was no wish that the Government should avail itself of any such power. He said:—

"A suggestion had been made that the Government was anxious, by means of this Bill, to rid itself of obligations which it undertook in the last century, at the time of the decennial settlement. Speaking for himself, he might say that the Government had no such wish; his impression was, as the hon'ble member in charge of the Bill would probably tell the Council, that any obligations distinctly undertaken by the Government as part of the basis of the decennial settlement, which afterwards became the permanent settlement, should be maintained intact, and that the Government should not attempt to rid itself of those obligations. That was a point which would be fairly and impartially considered and fairly and impartially laid before the Council."

On that occasion the Bill was re-committed chiefly for the purpose of ascertaining what embankments the Government were bound to maintain, and for other minor reasons. That proposal came before the Committee, and it became MR. SCHALCH's duty to prepare a schedule of the embankments which the Government were bound to maintain. The schedule was prepared by him after much consultation with the executive officers as to what embankments were then maintained; and after wading through a mass of papers as to what were the obligations of Government in regard to those embankments, the schedule appended to the Bill was prepared. The hon'ble member said he did not know how the schedule was prepared. MR. SCHALCH thought he might say how it was prepared and how those particular embankments were entered in the schedule, and other hon'ble members of the Committee would probably confirm his statement. The schedule was prepared and circulated to all the members of the Committee. The Committee would not examine the various items in the schedule (the HON'BLE MR. SCHALCH was prepared fully to explain them), but accepted the schedule with the understanding that it would be discussed in Council. That was the way the schedule was prepared and became a portion of the Bill. With regard to the principle on which it was prepared, he would beg to

say a few words. In the speech of His Honor the President he recognized merely those obligations which were distinctly undertaken by the Government at the time of the decennial settlement. Looking through all the papers connected with the permanent settlement, MR. SCHALCH could find nowhere that the Government had distinctly undertaken to maintain any embankments. In almost every district the zemindars, however, had entered into certain obligations in which they distinctly stated that they would maintain embankments within the boundaries of their estates. The kubooleuts ran in this form—

"I will keep up embankments regularly in my estate according to custom. Should I fail to do so, whatever loss may follow is mine only."

MR. SCHALCH would not yet go into the question of the liability of the zemindar. The liability was contained in this engagement of the zemindar, and he could find nowhere any engagement made by the Government to maintain embankments. But on looking into some other papers, he found that there were, subsequent to the decennial settlement, engagements by which the Government was bound to maintain certain embankments. For instance, the embankments included within the estates of the Rajah of Burdwan. At the time of the settlement the Rajah of Burdwan received a remission of revenue of Rs. 60,000 for the purpose of maintaining embankments throughout his estates, but by some process or other the embankments were not maintained, although the Rs. 60,000 was remitted for the purpose. But in 1822 the Government did enter into a distinct arrangement with the Rajah that in future, provided he paid that Rs. 60,000 as Government revenue, the Government would maintain the embankments within his estate. MR. SCHALCH considered that a clear and specific engagement, and he therefore introduced into the schedule all the embankments now maintained by the Government in the old Burdwan estate. The Council would find those embankments specified in the schedule in the items numbered from No. 1 to No. 28. That was the only specific engagement to maintain embankments which he found the Government had ever made. There were another set of embankments which was not noticed in the Board's report. That was in regard to the embankments in Hidgelee. They formed the subject of a careful inquiry by Sir Henry Ricketts when a member of the Board of Revenue. He reported that those embankments consisted of seven different kinds of embankments which he specified.

The matter was carefully considered by the Government, and they finally accepted the obligation of maintaining the sea bund mentioned in the schedule as No. 36, extending over a length of 41 miles. They further accepted the obligation of maintaining the outer embankment along the river Hooghly and up to the creek to a certain distance. And they accepted the duty of cutting and keeping open these bunds at the breaches of those embankments. But the expense of maintaining all other embankments in Hidgelee was to be borne by the zemindars. From that date the only embankments borne on the books of the Government and maintained by Government were those that they then undertook to maintain, and they have been included in Nos. 39 to 54, both inclusive. There remained only three other lines of embankment.

Two of these were what was called station embankments, one protecting the station of Rampore Beauleah, and the other Maldah.

[HIS HONOR THE PRESIDENT observed that the hon'ble member was rather entering into an explanation of the items in the schedule, which would be better considered at a later stage of the proceedings.]

THE HON'BLE MR. SCHALCH resumed.—He would not now proceed with any further explanation of the schedule; but the Council would see from what he had already said, that the schedule was framed in entire accordance with the opinion expressed by the Board of Revenue in their letter, where they said they considered that embankments needed for the protection of cities should be maintained by Government, and the three classes of embankments which he had mentioned were the only embankments which were entered in the schedule, because they were the only ones which the Government, in accordance with that opinion, was obliged to maintain.

The hon'ble mover of the amendment had observed that this subject was fully considered in the Board's letter of 1837, and that the determination then arrived at should not be set aside except by a judicial decision. But if the hon'ble member referred to the Board's letter, he would find that it did not support him so far as he would wish. In the first place, one of the very important embankments then maintained was the embankment which protected the 24-Pergunnahs. The circumstances relating to that embankment were very complicated, and MR. SCHALCH would therefore prefer not to discuss them until the Council came to consider the schedule. He would merely observe that the final result to which the Board arrived was set out in the 51st paragraph of the Board's letter, which showed that the Government was so far obliged to maintain those embankments, that if they did not keep them up they should be obliged to refund the sum of Rs. 16,786 which the zemindars originally paid to Government when they gave up the maintenance of those embankments. Then he might also observe that the hon'ble member had stated that the Moorshedabad embankments had been omitted from the schedule. Those embankments had been omitted because the Government was not bound to maintain them; and so far as the decision of the Board of Revenue would show, it was stated by the Commissioner of Moorshedabad that "he had been unable to discover any document binding the State to this expenditure with regard to bunds in estates the property of zemindars."

But Mr. Schalch would not further go into the question of the schedule at present.

MR. SCHALCH thought he had now answered the question, which the hon'ble member suggested, why certain embankments had been included in the schedule and why certain other embankments had been left out. The reason was that in the one case the Government was bound to maintain them, and in the other they were not so bound.

With these preliminary remarks he came to the two serious objections which he had to the amendment before the Council—first, that it would throw upon the Government the charge of keeping up embankments without any

determination as to how that charge was undertaken. He found after a very careful review that the embankments which the Government was now maintaining might be divided into three classes—first, embankments which the Government had undertaken to maintain, and which were entered in the schedule; secondly, those which the zemindar was bound to maintain, and which from their importance were of such a nature that their non-maintenance would entail very serious loss to the people; and, lastly, those which the zemindar was also bound to maintain, and which on occasions of emergency the Government had taken up; and once having taken them in hand they found it difficult to get rid of them, because their abandonment might be injurious to the people. He would mention one instance of the latter class in Nuddea. In consequence of the heavy inundation in 1867 much loss was caused. The Collector found that the embankments had not been repaired, and he suggested that an inquiry should be instituted: he fully allowed that the zemindars were bound to repair the embankments, but as the zemindars would not maintain them he suggested that the Government should repair them. The executive officer found that small bunds had been thrown up by the zemindars to protect their lands, but he insisted that it was necessary in the interests of the people to repair the embankments. The Government then undertook to repair the embankments, but with this distinct reservation, that they had acted merely on an emergency, and that their action should not be construed into a precedent or be held to throw any new claim upon the Government. MR. SCHALCH thought it would be very unfair to the tax-payers generally that the Government should be bound to do a duty which the zemindars were under obligations to perform: it would be unfair to the public to ask the Government to accept the whole of the costs of those embankments which they were not under obligations to maintain.

The second objection to the amendment was, that it would leave the responsibility of the Government under the Act in the same undecided state in which it was now, and which it was one of the objects of the Bill to remove. One of the objects of the Bill was that from the date of the passing of the Act each person would know what embankments he had to maintain; whether it should be determined that the zemindar or the Government should maintain a particular embankment, it should be distinctly laid down upon whom the responsibility lay. And that was done by reference to the schedule. MR. SCHALCH therefore objected to the omission of the schedule in that sweeping manner by which the hon'ble member proposed to throw on the Government the liability to maintain embankments. If the amendment was not accepted by the Council, and if the provision declaring the necessity of the schedule was maintained, he should be most happy, in discussing the details of the schedule, to state the reasons for its adoption in its present form, and it would then be in the power of the Council to determine what embankments should, and what embankments should not, be entered in the schedule.

THE HON'BLE MR. COLVIN said that he had not intended to take part in any debate upon the clauses of the measure now under consideration, for the Bill

was originally introduced before he had the honor of being a member of the Council, and had been subjected from time to time during its progress, before it assumed its present form, to various important changes and modifications, with the history and character of which he had hitherto been scarcely as familiar as he could wish. But the discussion on the amendment of the hon'ble member on his left with regard to Section 41 had made him desirous of offering a few words upon the general principle which appeared to him to be involved therein, and of stating his reasons for wishing to support the section as it stood, though he did not purpose to enter into the details of the points at issue.

The hon'ble member (Baboo Digumber Mitter) had urged with considerable force that it was the duty of Government, in view of the terms of the permanent settlement, to continue to maintain at the public charge, all those embankments which had hitherto been, or were now being, kept up at the expense of the State; that the obligations of Government in that respect were of a lasting and binding character; and that, consequently, the embankments which were enumerated in Schedule (E) annexed to the Bill, formed but an incomplete and inadequate list of those in respect to which responsibility attached to the State.

On the other hand, the Government argued that their present obligations, or what in practice had come to be considered as such, in respect to the maintenance of embankments, had grown and increased from time to time, under special needs and demands, to their present extent, and that they considerably exceeded the limits at which it was intended to fix them on the occasion when they were last settled, and that now it was high time to draw the line somewhere. This view appeared to receive much support from the official records of recent years which had been brought to bear on the case.

But be that as it might, it would, he thought, be admitted on all hands that both the hon'ble member who had charge of the Bill and the Select Committees to whom it had been more than once referred, had given every consideration to the representations which had been made to them during the progress of the measure, and in consequence of which several of the changes from its original provisions, to which he had already alluded, had been adopted, and that in doing so they had gone far towards meeting the views urged in those representations, and had endeavoured as fairly and equitably as possible to assess the respective obligations of the Government and zemindars; he would therefore be very unwilling, for his part, lightly to disturb the conclusions which had been arrived at after so much deliberation. At any rate, it seemed essential that such obligations should be defined in the form of a schedule, though it might be a point for decision, when the schedule itself came up for discussion, whether any other embankments should be added to the list. He would venture to remind the Council that all legislation upon questions such as this, in which the issues involved the adjustment of charges between different parties, must necessarily partake in a greater or less degree of the principle of compromise, and he would prefer to accept the concessions which had already been made by Government in the direction of the special claims so ably represented by the hon'ble member on his left, in order to facilitate a permanent, or at any

rate, it might be hoped; not less than a decennial, settlement of a long and much-vexed question upon a fairly if not wholly satisfactory basis.

Upon these grounds he wished to support the clause as it stood.

THE HON'BLE MR. WYMAN said, he thought the amendment went much further than the mover of it himself considered it really did, as he said that His Honor the President had not only pledged himself to maintain intact the obligations of the Government in respect to embankments, but to maintain all the existing embankments. What His Honor really did was not to pledge the Government to maintain the embankments which they were now maintaining, but that where it was shown that the Government was under obligations to maintain certain embankments, that obligation should be respected and maintained. But the amendment of the hon'ble member went much further than that. He started by asserting, practically, that every embankment now maintained by Government should be maintained for ever at the expense of Government. That was not what His Honor had promised, nor what the hon'ble member in charge of the Bill referred to in his introductory observations. He distinctly pointed out that there were certain liabilities which required adjustment. From the circumstance that the zemindars avoided their obligations, the Government had been led to take them up in the interests of the people; and because the Government had done that in view of the great and important public interests which were concerned, the hon'ble member said it should be declared that the Government should be held liable for the continued maintenance of those works. Neither His Honor the President nor the hon'ble mover of the Bill had departed from what was proposed to be done. The argument therefore really turned upon the question whether the schedule attached to the Bill did or did not contain the embankments which the Government were bound to keep up. If there was any obligation to keep up any embankment which was not entered in the schedule, MR. WYMAN had no doubt that the matter would be carefully considered; but there manifestly must be an advantage in having a schedule containing a specific enumeration of all the embankments the Government were bound to maintain. It set the question at rest, and it showed the zemindar also what his obligations were. In page 10 of the Report of Proceedings of the last meeting, where an extract was made from the Board of Revenue's letter of 1837, great stress was laid by the hon'ble member on the ability of the zemindar to ignore his obligations. The words used were—"should I fail to maintain embankments, the loss will be mine only." MR. WYMAN submitted that the matter did not end there. It might involve loss to hundreds of persons, it might cause inundation to the country, and affect places far beyond the immediate locality of the embankment. And therefore the Government had thought it right to say to the zemindars—"Here is a public duty which you have not performed: we cannot saddle ourselves with the cost. We do the work to prevent a calamity; but you must pay for it." He thought that was fair and reasonable. The Government accepted their liability to maintain certain embankments, and made a compromise by saying—"We will accept this much, but we will not

accept more. It is necessary that this thing should be done: we have done our part; and now you do yours." MR. WYMAN submitted that the arguments of the hon'ble member were hardly so convincing as he thought they were. It would never do to compel the Government to maintain what under peculiar circumstances they had done for the benefit of the people, but the obligation to do which really lay with the zemindar.

THE HON'BLE THE ACTING ADVOCATE-GENERAL said, it might perhaps be necessary for him to say a few words. The hon'ble member in charge of the Bill had sufficiently and properly shown to the Council that the Government was in no way disposed to avoid any responsibility or obligation undertaken by the Government under the terms of any contract. He thought that the hon'ble mover of the amendment had not ventured to suggest that the Government had avoided any obligation. But he had taken advantage of the circumstance that in consequence of neglect of duty on the part of zemindars, the Government had in fact, for some considerable time, kept up certain embankments, which they were under no obligation to keep up, for the protection of the inhabitants of particular districts, and he (the hon'ble mover) had founded the liability of Government to keep up all existing embankments upon the circumstance to which reference had been made. THE ADVOCATE-GENERAL thought the object of the Bill was to adjust the liability, in respect of maintaining embankments, between the zemindars and the Government. It appeared to him that the embankments which the Government had kept up, other than those which they were bound to maintain, were embankments which they might (if necessary) compel zemindars to maintain through the medium of Courts of Justice, by suits instituted to enforce the terms of the engagements entered into by zemindars. The present legislation embodied a simple means of obtaining redress in respect of grievances which the Government had for a considerable number of years borne at the hands of zemindars. The argument of the hon'ble member had taken the Advocate-General by surprise; for it amounted to this, that whenever a person, actuated by generous sentiments, voluntarily benefited others by certain specific acts, it should be held that he had undertaken the duty, or incurred the liability, to continue in future to perform similar acts for a similar purpose, and to release parties actually liable and bound to perform them. The whole argument of the hon'ble member seemed to be based upon the above suggested principle, and therefore carried with it no weight. THE ADVOCATE-GENERAL must give his vote in favour of this part of the Bill, and support the mover in this measure.

THE HON'BLE BABOO DIGUMBER MITTER said,—"I do not think that I am called upon to notice all the objections that have been raised against the amendment I have moved. The question principally raised by the amendment is whether the schedule annexed to the Bill, purporting to contain a specification of all the embankments which should be maintained at the cost of the State, should be accepted by this Council and made the basis of legislation on the subject. I have shown by figures that cannot lie, that the mileage of embankment which is now being maintained at the cost of the State is 1,329, whereas

it should have only to maintain 864 miles if the Bill passed into law with the schedule preserved in all its integrity. The inference which that fact unavoidably leads one to is, that many embankments must have been excluded from the schedule which are at present maintained at the expense of the State. Some hon'ble members would meet this objection by restoring to the schedule such lines of embankment as might have been unjustly excluded from it. The question would still obtrude itself, whether this Council is competent to enter into this sort of judicial inquiry, especially in the absence of the parties who are interested in the matter, and who can alone offer information or adduce evidence on the subject."

His Honor the President said, he was inclined to think that the arguments which had been adduced against the amendment had induced the hon'ble mover of the amendment to recede from the position which he had taken up. He admitted that his arguments were opposed not to the general principle of the Bill which his amendment seemed to maintain, but to the particular schedule before the Council. He had occasion to point out that hon'ble members were somewhat premature in considering the details of the schedule. The time would come when the details would be properly and thoroughly discussed. It was evident that the schedule would have to be very carefully considered. Looking to the statement regarding that schedule which was given by the hon'ble member in charge of the Bill, looking to the circumstances under which the schedule was appended to the report of the Committee, it would probably be desirable that we should ask that Committee to be good enough to resume their labors so far as to re-consider the schedule. His Honor thought that the schedule having been attached to the Bill subject to future consideration, it might perhaps be referred back to the Committee to consider it a little more fully. Perhaps if he said more he should be attempting to slay the slain, for the hon'ble member's arguments had been sufficiently slain. But perhaps he might say that he heartily and entirely objected to the principle of the amendment, as it placed on the Government an obligation which did not now lie on the Government; and he was extremely unwilling that the Government, representing not the Government as an entity, but the tax-payers of the country, should, in a matter of this kind affecting the permanently-settled estates of Bengal, for one moment think of consenting to assume obligations not legitimately falling upon them. The permanent settlement had conferred enormous benefit and revenues on the zemindars of Bengal. Those revenues were subject to certain obligations, and he most strongly held as proper and right to the tax-payers that we should hold the zemindars to the obligations which they undertook at the time of the permanent settlement, from which they derived such great benefit and revenues. Therefore, adhering as he did to the declaration that nothing was further from his intention than to recede from the obligations incurred by the Government at the time of the permanent settlement, he at the same time strongly objected to throw on the Government any additional obligation as between the Government and the zemindar, which the Government did not undertake at the time of the permanent settlement, and which neither equity nor the law of the case threw

upon the Government. His Honor must in that view oppose the amendment. The hon'ble member had alluded to the Board's report of 1837. But the year 1837 was not the present time; it was also not the time of the permanent settlement. The papers of 1837 might justly and properly be referred to the Select Committee as throwing light upon the obligations of the Government at the time of the permanent settlement. He desired that the matter should be sifted in that way. But the question now for consideration was, were the embankments, or were they not, an obligation at the time of the permanent settlement, or an obligation which the Government at any time permanently undertook as between it and the zemindars. That being so, he submitted that the amendment which proposed to put the question on an entirely different footing should not be accepted.

The motion was then negatived.

On the motion of the Hon'ble Baboo Digumber Mitter, Section 73 was omitted from the Bill.

The further consideration of the Bill was postponed.

The Council was adjourned to Saturday, the 22nd instant.

Saturday, the 22nd February 1873.

Present:

The Hon'ble G. C. Paul, *Acting Advocate-General, presiding.*
The Hon'ble F. L. Beaufort.
The Hon'ble V. H. Schalch.
The Hon'ble C. E. Bernard.
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor.
The Hon'ble B. D. Colvin.
The Hon'ble F. F. Wyman.
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor.
The Hon'ble Baboo Digumber Mitter.

EMIGRATION TO THE LABOR DISTRICTS.

The Hon'ble Mr. Beaufort said, he begged leave to postpone the motion, which stood in the list of business, that the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract-labor and service, be read in Council. He adopted this course at the suggestion of two hon'ble members, who thought that sufficient time had not been given for the consideration of the Bill. At the same time he would say that he had no idea of pressing on the Bill too rapidly when he proposed to proceed with it that day, for the Bill was in the hands of the members on Saturday last, and it was, as already explained, little more than a re-arrangement of the law which now existed. He believed that the practice of the Council, on the motion to read a Bill, was to confine the debate to the principles of it, and to leave the details for the consideration of the Select Committee; and as the Bill did not propose to interfere with the principles of the

present law, it appeared to him unnecessary to invite any lengthened discussion at the present stage. But in deference to the wishes of the two hon'ble members, he had no hesitation in asking leave to postpone the motion, of which he had given notice, for a fortnight.

He would take this opportunity of supplementing what he said at the last meeting in moving for leave to introduce the Bill. He had omitted to refer to one particular section of considerable importance. He had intended to mention the subject on the last occasion, but had forgotten to do so. The section to which he alluded was Section 105 of the present Act II of 1870, which appeared in the Bill as Section 127. The provision in the present law was, that when a laborer had suffered imprisonment for six months for desertion, that imprisonment should have the effect of cancelling the contract. In this Bill Mr. Beaufort had inserted certain words (which he had taken from a Bill lately laid before the Imperial Council regarding emigration) which very much altered that provision, as it declared that the imprisonment should have that effect if the employer so desired in writing, and not that such imprisonment should of itself operate as a cancelment of the contract. As the words of the Bill stood the contract would not be declared cancelled by eason of the imprisonment unless the employer requested that such order be passed. That was a matter of considerable importance, and was very much discussed in former years in this Council. It attracted the attention of the Government of India and the Secretary of State, and a Bill passed through this Council was rejected because it did not contain a section providing that a certain term of imprisonment as a punishment for desertion should have the effect of cancelling a contract. He would shortly state the arguments for and against the provision. First as against the provision, it was urged that it was very unjust to place it in the power of one of two contracting parties to determine the contract at his own pleasure to the wrong of the other party; very unjust that the laborer should have it in his power by his own misconduct to free himself from his contract to the serious loss of the employer, possibly with the view of selling his labor at a higher price to another person. On the other hand it was argued that the parties to the contract were not on equal terms when the contract was made. The employer was perfectly aware of the circumstances under which the contract would be carried out, while the laborer had no knowledge, or an erroneous conception, of what was before him. At that time it was believed that the condition of the laborer was often deplorable, and it was considered just under the circumstances that he should have some means of release; and it was said that six months' imprisonment was a full penalty for his offence in breaking his contract. It was also said that the condition of the laborer must be extremely bad when he would voluntarily undergo six months' imprisonment in order to cancel the contract. But the chief argument which weighed with the superior authorities was, that the object and natural result of such a provision of law was to enlist in favour of the laborert he kindness, humanity, and self-interest of the employer. MR. BEAUFORT

would not have proposed to alter that provision, after all the discussions which had taken place when the former Bills were under consideration, and the expression of opinion of the higher authorities, but for the following reasons. He had already mentioned that he had taken it from a Bill before the Imperial Council, and it appeared to him that the matter might now be considered from a different point of view. It was generally admitted, he believed, that the condition of laborers in the tea districts at present was very different from what it was at the time when the former Bills were considered. Very great improvement in that respect had taken place, and it might be said with truth of most of the proprietors and managers of tea plantations now that they treated their laborers with great kindness and consideration, and that the life of the laborer now was not the life of misery which it was once described to be. There was another consideration which had also weighed with him. A very large proportion of the laborers now were men who had re-contracted on the spot after the expiration of their original contracts; and of course the considerations which applied to laborers who had entered into their first contract in ignorance would have no proper application to persons who made new contracts after the personal experience of several years. MR. BEAUFORT could not say that he was wholly in favour of the alteration proposed, but its insertion in the Bill would lead to a full discussion of the question by the Select Committee. It was a matter on which the employers had always expressed a very strong opinion, and he trusted that the Select Committee to whom the Bill might be referred, would carefully consider whether the present provision of the law might not be reasonably and equitably open to some modification.

THE HON'BLE MR. COLVIN said, as the hon'ble member in charge of the Bill had assented, in deference to the hon'ble member who usually sat on Mr. Colvin's right (Mr. Robinson) and himself, to postpone for a short period the motion for the reading of this Bill, perhaps he might offer a word of explanation as to his reasons for having made that request. His Honor the President was pleased on the last occasion to direct that the Bill should be published in the Gazette, in order that the changes proposed to be made in the law might be thoroughly considered before the Council proceeded further with the Bill. Although the hon'ble member had explained that the provisions of this Bill did not involve any radical change of principle from previous enactments passed, but was rather a re-arrangement of the existing law with the modifications which he had explained, still it appeared to MR. COLVIN that those modifications were in themselves of no small importance, and might fairly be opened to discussion of such a nature as was usual at this stage. And as the Bill had to a certain extent re-opened the whole question, it was possible that suggestions for other modifications might be made. There was scarcely time for the various public bodies and others interested in the matter here, such as owners and agents of tea estates, owners of tea stock, and coolie contractors, and still less for tea-planters and proprietors at a distance, to submit any expression of their views. Speaking for himself, he might say that he had not had time to go into the subject as thoroughly as he could wish, and he had

therefore ventured to ask for some further time for the general consideration of the Bill. He was indebted to the hon'ble member for his acquiescence with that request.

The motion that the Bill be read in Council was then postponed for a fortnight.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. SCHALCH moved that the report of the Select Committee appointed to consider certain amendments in the Bill to amend the law relating to embankments and water-courses, be further considered in order to the settlement of the clauses of the Bill At the last meeting of the Council, the amendments proposed by the hon'ble member opposite (Baboo Digumber Mitter) were discussed and disposed of, and MR. SCHALCH now proposed to take up the amendments of which he had given notice.

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, the first amendment which he proposed, referred to Section 18. By that section provision was made for appending to the proclamation to be issued by the Collector a list of the estates, villages, "and municipalities" mentioned in the notice. The object was to ascertain what municipalities of the first and second classes should be bound as municipalities to contribute towards the expense of maintaining embankments. The creation of first and second class municipalities had now fallen to the ground, and it was therefore proposed that the word "municipalities" should be omitted, landholders within those municipalities bearing their proper share of the expense of maintaining embankments in the same manner as they would bear their share as proprietors of ordinary estates. He therefore moved the omission from line 20 of the words "and municipalities," and the insertion of the word "and" between the words "villages" and "estates."

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, before going to the next amendment on the list, he thought it would be well to get rid of the other sections which also referred to municipalities. The first of these was Section 44. The proposition was to omit the portion of that section commencing at the 14th line and ending at the word "executed" in the 18th line. The words proposed to be omitted were—

"Provided that the Collector may, if he thinks fit, order that a portion of the total sum payable shall be paid by any municipality of the first or second class which is, in his opinion, benefited or protected by the works or repairs executed."

The motion was agreed to.

THE HON'BLE MR. SCHALCH next moved the omission of the second paragraph of Section 46, which referred entirely and solely to municipalities, and was as follows:—

"Whenever it has been ordered by the Collector that a municipality is liable for a portion of the said total sum, the notice shall contain a statement to that effect, and shall be served on the Chairman of the municipality."

The motion was agreed to.

THE HON'BLE MR. SCHALCH moved to omit Section 51, which also referred only to municipalities, and was as follows:—

"The Collector shall likewise determine the amount payable in respect of any municipality rateably, in proportion to the benefit derived by it from the work or repair executed, and the remaining sum shall be apportioned as directed in the two last preceding sections. Provided that no rate-payer in such municipality shall be required to pay any portion of such remaining sum in respect of any tenure which is situated within the limits of such municipality"

The motion was agreed to.

In Section 53 THE HON'BLE MR. SCHALCH moved the following amendments also relating to municipalities:—

"To omit the words 'or municipality' in line 2, and to insert the word 'or' between estate' and 'tenure.'

"To omit the words in lines 9 to 13 'And provided also in the case of a municipality that the instalment payable in any one year shall not exceed ten rupees per centum of the total income of such municipality during the year last preceding.'"

The motions were severally agreed to.

THE HON'BLE MR. SCHALCH moved the omission of the second paragraph of Section 57, also referring entirely to municipalities, which was as follows:—

"It shall be lawful for the Commissioners of any municipality to pay to the Collector, on the dates fixed by the order passed under Section 54, the sum which is declared in such order to be payable in respect of such municipality; and, for the purpose of realizing the amount so disbursed, to increase the rate of any tax leviable therein."

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, no provision had been made in the Bill for cases where there might be a doubtful jurisdiction as to land situated within two districts. To meet such cases we had adopted the principle laid down in regard to jurisdiction in civil cases, and suggested that where land was situated within the limits of two different districts, the Collector of either district might have jurisdiction on reporting the matter to the Commissioner of the division and receiving his sanction, when it would be competent to the Commissioner to give jurisdiction to either Collector. And where the land lay in two different divisions, it was proposed to allow the Commissioner of either division, with the concurrence of the other, to give authority to proceed in the matter. Nothing, MR. SCHALCH thought, need be mentioned on this subject further than that it was necessary to have some provision for cases that might arise. He would move to introduce the following clause after Section 22:—

"22A. If the lands, which are likely to be affected by any such proposed work, are situated within the limits of different districts, the Engineer may report to the Collector of any district within which any portion of such lands is situated, and such Collector may proceed in respect of all the lands likely to be affected by such work; but in such case he shall apply to the Commissioner of the division for authority to proceed in such matter; and the Commissioner of the division, if all the lands are situated within his division, may give authority to any Collector within whose district any portion of such lands is situated to proceed in the same.

"If the districts, within which the lands likely to be affected by any such work are situated, are subject to the Commissioners of different divisions, the Collector, to whom the Engineer has submitted his report, shall apply to the Commissioner of the division within which his district is situated, and such Commissioner may, with the concurrence of the Commissioner to whom the other district is subject, give authority to proceed in such matter."

The motion was agreed to.

THE HON'BLE MR. SHCALCH then moved the insertion of the following section after Section 27:—

"27A. The provisions of Section 22A shall be applicable to proceedings taken under this Part."

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, the next section in which he proposed an amendment, was Section 32 in Part V of the Bill, relating to the acquisition of land. Some difficulty was experienced in Commitee as to how to render the provisions of the Land Acquisition Act of 1870 applicable to cases in which land was taken up under this Bill. The section as it now stood specified the sections of the Land Acquisition Act which were declared applicable. But since the Bill had been in Committee he had had the benefit of consulting with his hon'ble friend opposite (Mr. Beaufort) and others, and it was now considered that the simplest and most perfect way of extending the provisions of that Act to cases under this Bill was to omit all the words from line 5 to the end of the section, "and all the provisions contained in Sections 10 to 15, 18 to 34, 36, 37, 38, 42, 51, 55, 58 (as amended by Act IX of 1871), and 59 of the Land Acquisition Act, 1870, shall be applicable to such proceedings," and to substitute for them the following words:—

"In accordance with the provisions of the Land Acquisition Act of 1870, or any other law for the time being in force for the acquisition of land for public purposes."

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, Section 35 referred to the case where the taking of land for the purposes of the Act affected rights in other lands or certain other rights. Here also some difficulty was experienced. But after consideration it was thought fit to adopt the following section, which he now moved to substitute for Section 35:—

"When any such claim is made, proceedings shall be taken in view to determine the amount of compensation, if any, which should be made, and the person to whom the same should be payable, in accordance with the provisions of the Land Acquisition Act, 1870, or any other law for the time being in force for the acquisition of land for public purposes."

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, the next amendment was to omit Sections 37, 38, and 39 of the Bill. Those sections corresponded with Sections 35, 39, and 40 of the Land Acquisition Act. As by the adoption of the previous amendments all the provisions of that Act had been rendered applicable to proceedings under this Bill, it was no longer necessary to retain the sections which he now moved to omit. He therefore moved that they be omitted.

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, he now came to the amendment to insert a new section after Section 41. Section 41 referred to the duty of the Government to maintain certain embankments entered in the schedule annexed to the Bill. In addition to the embankments therein specified, there was one other case in which the Government considered themselves pledged to contribute towards the maintenance of embankments in the two purganas of Futtehsing and Rokanpore. He was aware of the circumstance when the schedule was drafted; but under the impression that this Bill did not bear on those embankments, no provision was made for it. But he had since been led to believe that doubts might be thrown on the intention of the Government in omitting any mention to such contributions, and it might be supposed that they were desirous of avoiding what they considered to be their obligations. Consequently, to remove all doubts, he proposed to insert the section of which he had given notice. He would take up the time of the Council for a few moments to give a history of the contributions made on account of embankments in these purganas. So far back as 1790, or even a few years before, mention was made in the records of the contribution of Sicca Rupees 1,375, which was then made to the zemindars towards keeping up embankments in the Rokanpore purgana, and of Sicca Rupees 1,600 for the same purpose in Futtehsing. These contributions were paid for a long time. He found them the subject of inquiry in 1834, when in the report of the local authorities it was stated that these embankments were not repaired for years.

The local authorities were of opinion, therefore, considering that the condition on which the contribution was made was not fulfilled, that the contribution should cease to be paid. The Board, however, were of opinion that the contribution should be continued, the responsibility of the maintenance of embankments resting as hitherto upon the zemindars. That proposition was accepted by the Government, and from that time a sum in Company's Rupees equivalent to the contribution then made, had been paid to the zemindars. Those embankments had not been hitherto taken up as public embankments, and it was probable that they were not of such importance as to render it necessary that they should be so taken up. It was therefore proposed that so long as they remained not public embankments, the contribution should be made. If hereafter it should be found necessary to take them up as public embankments, then it was proposed that from that time the contribution should be formed into a fund to be appropriated to the repair and maintenance of the embankments, and any balance at the end of one year remaining unexpended should be carried towards the fund of the next year. If it was found that the contributions were not sufficient, then, after deducting from the expense the amount credited to the fund, the balance would be recovered from the zemindars under the provisions of this Bill. It was then further declared that if it should be found that the embankments were not necessary, then the contribution would cease. But so long as any embankment was kept up, the contribution would be paid as it had hitherto been done. He thought he need say nothing

further, except that he had made an alteration in the latter part of the proposed section, which, as at present worded, might be held to constitute the Collector the final authority in determining the necessity or otherwise of the embankments. Another alteration he would propose was the substitution at the end of the new section of "any embankment" for "the embankments." The intention was that the contribution should be revived, if it was found that the maintenance of any one embankment had again become necessary. MR. SCHALCH then moved the introduction of the following section after Section 41:—

"41A. In accordance with the custom heretofore in force in respect of the purganas entered in Schedule F annexed to this Act, the Government shall continue to contribute annually the sum noted therein for each purgana respectively towards the maintenance of the embankments thereof.

"If the embankments maintained in any such purgana shall at any time be declared to be public embankments under the provisions of Section 4, the Collector shall, from the date of such declaration, keep a separate account for such purgana, in which the aforesaid sum shall be credited at the commencement of each financial year. The unexpended balance at the close of each year shall be carried on to the credit of the account in the next succeeding year, and shall be available for the cost of repairing or erecting all the embankments which it may be deemed necessary to maintain in such purgana.

"If at any time after the passing of this Act, on an inquiry made by the Collector, as far as possible in accordance with the provisions of Part III, it shall be found that it is unnecessary for the public interest to retain any embankment in either of the said purganas, the Lieutenant-Governor may direct that such contribution shall cease in respect of such purgana. Provided that such contribution shall again be made in accordance with the provisions hereinbefore contained, if it shall appear to the Lieutenant-Governor, on the report of an inquiry similarly conducted, that the maintenance of any embankment in such purgana has again become necessary for the public interest."

THE HON'BLE MR. SCHALCH said, Section 49 provided for the apportionment of expenses. He moved the addition to the section of the following clause, to provide that in the case of these two purganas the apportionment should be made after deducting the amount of contribution:—

"Provided also that the sum standing to the credit of a purgana in Schedule F in the account kept by the Collector at the time when the total amount payable is fixed under the provisions of Section 44, shall be deducted from the total amount payable in respect of such portion of any embankment as is situated in such purgana; and that the zemindars of the estates situated therein shall be charged only with the balance of the amount (if any) which may remain payable."

The motion was agreed to.

THE HON'BLE MR. BEAUFORT said, Section 66 provided that no order of a Collector and no payment made by him in proceedings taken under the provisions of the Bill should be admissible in a Civil Court as evidence that the person named therein as the zemindar or proprietor of any estate or tenure was the zemindar or proprietor of such estate or tenure. It appeared to him unnecessary to introduce into the law a provision of that nature. It might be that the evidence afforded by the finding of the Collector would, under the circumstances, be of little value; but, whatever the value of the evidence might be, it should be allowed to stand for what it was worth. Certainly no Court could

reasonably rely on that evidence alone; but to exclude it altogether from consideration was to throw a slur on the proceedings of the Collector and to say that no reliance could be placed on them, or in other words to presume that the decision of the officer to whom so much power was given by the Bill, would be inequitable and fundamentally bad. MR. BEAUFORT moved that the section be omitted, which would leave it to the parties to make what use they could of proceedings taken under the Bill.

THE HON'BLE MR. SCHALCH observed that there was no objection to the omission of the section. It was only introduced to satisfy the fears of some hon'ble members that Munsifs and other Judges of inferior grade might, unless some provision of that kind was made, admit altogether irrelevant evidence. But as the hon'ble member considered the section unnecessary, MR. SCHALCH had no objection to its omission.

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, with regard to Schedule E, which referred to those embankments which the Government were bound to maintain, he would prefer to have a little further time to enable him to show exactly why the Government had accepted the obligation of maintaining those embankments and no others. He was still looking through the papers, and he should now like to postpone the further consideration of the Bill until the next meeting of the Council.

On the suggestion of the Acting Advocate-General, a verbal amendment was made in Section 40, and the further consideration of the Bill was then postponed to the next meeting.

The Council was adjourned to Saturday, the 1st March.

Saturday, the 1st March 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble F. L. BEAUFORT,
The Hon'ble C. E. BERNARD,
The Hon'ble MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble B. D. COLVIN,
The Hon'ble T. M. ROBINSON,
AND
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR.

MOFUSSIL MUNICIPALITIES.

THE HON'BLE MR. BEAUFORT presented the report of the Select Committee on the Bill to amend the District Municipal Improvement Act and the District Towns' Act. He said the Council would remember that the object of the first section of the original Bill was to authorize the election of Municipal Commis-

sioners in municipalities under the District Municipal Improvement Act. The Select Committee were of opinion that wherever the principle of election—the system of self-government—was admitted, it should be so admitted as to afford a fair prospect of success, and that that would not be the case if the number of elected Commissioners were smaller than the number of Commissioners appointed by the Government. The Committee therefore recommended that not less than two-thirds of the Commissioners should be elected, if it were directed that any Commissioners at all were to be elected. The number of Commissioners under the District Municipal Improvement Act was unlimited. The minimum number was fixed at seven, exclusive of certain ex-officio Commissioners; but any number of Commissioners might be appointed, and therefore without some restriction the elected Commissioners might at any time be overwhelmed. The Committee also proposed that the rate-payers who were to be allowed to vote at such elections should be those who have paid the tax on houses, buildings, and lands. Act III of 1864 also allowed the levy of a tax on carriages, horses, and elephants, but the Select Committee were of opinion that persons paying a tax of that kind merely from the accident of having carriages, horses, or elephants, were not entitled to vote at the election of Commissioners, and that the qualification for a vote should be confined to persons holding a substantial interest in the municipality, viz. those who paid the tax on houses, buildings, and lands. The Select Committee also proposed to introduce a section declaring that the term of office of a Commissioner should be limited to three years, and providing for the rotation of Commissioners. Under the proposed section, at the end of three years a Commissioner would *ipso facto* vacate his appointment; but that would not prevent his re-election or re-appointment. The rules for the rotation of Commissioners under Act III of 1864, proposed by the Select Committee, were similar to those which were provided in the other municipal law, Act VI of 1868.

The third section of the Bill as amended referred to the election of the Vice-Chairman. The Committee was of opinion that whenever Municipal Commissioners were elected under section 1, the Vice-Chairman should always be elected; and another clause had been introduced to enable them to get rid of an objectionable Vice-Chairman by the vote of two-thirds of the Commissioners. The 4th and 5th clauses were the same as in the original Bill, with the exception of the words providing that the Commissioners under Act III of 1864 might expend a portion of the fund on the establishment and maintenance of hospitals or dispensaries and in the promotion of vaccination. At the time of drafting this Bill, it was forgotten that Bengal Act VII of 1867 had already provided for the expenditure of municipal money on such objects. Sections 4 and 5 therefore were confined to the application of a portion of the municipal fund in the establishment and maintenance of schools. A proviso was added to the original Bill with the object of securing the voluntary action of the municipal bodies in the expenditure of their money on schools; but the Select Committee were of opinion that the same principle should be applied to expenditure of money

on hospitals, dispensaries, and vaccination; and a new section had been added in that view, providing that no portion of the municipal fund should be expended on any of these objects without the consent of a majority of the directors of the fund There was a clerical error in the Bill as amended. The words "this Act" had been left out. The consequence was that as the section stood it would apply to the old Acts only and not to the Bill. It was merely a clerical error, and would be corrected on the proper occasion.

The only other point in the report of the Committee to which he need refer was the introduction of the new Section 7. Under the present system the municipal year, if he might use the expression, was different under different enactments. By Act III of 1864 the first day of the year was fixed for the 1st of May, and in the Act regulating the expense of police in towns—Bengal Act VI of 1867—which was in fact an amendment of Act III of 1864, the 1st day of January was fixed as the first day of the year. Under Act XXVI of 1850, the application of which was now very limited, but which was still extant, the 1st of May was declared to be the first day of the year. These different dates led to some confusion, and it might also be found convenient to alter the date of the municipal year for other reasons. For instance, the executive works to which the attention of municipal bodies was chiefly confined, were carried on immediately after the rains, and it might be convenient that the municipal year should commence at that time, in order that the estimates might correspond with the seasons. It was therefore proposed to introduce a section giving power to the Government to alter the date for the commencement of the year, and to declare on what dates the accounts and estimates should be furnished. The section as it stood in the amended Bill was, however, confined to the two Acts, III of 1864 and VI of 1868, and he would on the proper occasion propose to substitute for it another section extending the application of it to all the municipal laws.

Since the report of the Select Committee had been prepared—in fact only yesterday—a letter was received from the Municipal Commissioners of the Suburbs, proposing the enactment of provisions for the registration of births and deaths. The Committee had had no opportunity of considering that communication. That might be a very suitable and proper provision to introduce in the Suburbs of Calcutta. The registration of births and deaths was now enforced in Calcutta under Act VI of 1863; and it might be very advisable that a similar system of registration should be introduced in the suburbs and in other places. But whether the Council would sanction such rules, and whether it would think fit to introduce provisions for that purpose in this Bill or in a separate enactment, it would be for the Council to say. If it was thought expedient to introduce them into the present Bill, the best course to adopt would probably be to refer the Bill back to the Committee for the consideration of that point; and with that view he would make a formal proposal now, that the Bill should be referred back to the Committee for a report on the proposition contained in the letter from the Suburban Municipality.

His Honor the President said, before putting the question he wished to say for himself that he was extremely indebted to the Select Committee for their labours and the improvements they had made in the Bill. He thought that the changes which the Committee had made were decided improvements, and would materially relieve the Government from responsibility. It was entirely right and proper that the system of election should be tried in a manner most favorable to success; that if election be tried, it be tried in a substantial manner; that the tax-payers should have the right of election in the case of two-thirds of the Committee and of their Vice-Chairman. He also thought it was an extremely desirable arrangement that the election of members should be made by all the rate-payers at large, by all those owning or occupying property and charged with the payment of rates, and who had paid the rates. That was the view which he would have taken if on him had rested the determination of fixing the qualification of electors; but in so fixing it, the Committee had relieved the Government of considerable responsibility.

His Honor was also extremely willing to accept the proposal that endowments for the support of hospitals and dispensaries, and for the promotion of vaccination, should be voluntary, as it was proposed expenditure on account of education should be. With reference to the observations which fell from him on a former occasion—he was alluding to the suggestion that if the Committee thought fit, municipalities under Act III of 1854 should have the option, at their choice, of imposing taxation on the property and means of the inhabitants, as provided by Act VI of 1868, instead of a rate on houses, buildings, and lands—that proposal, he understood, did not meet with favor with some of the members; he understood that the native members of the Committee were decidedly opposed to it. As His Honor had said before, he did not seek by the influence of Government to press this upon the Council. He might say, therefore, that since the native members, as representing the native community, were averse to allowing this option in the mode of taxation, we should not attempt to press that view of the matter.

Then there remained only this letter from the Municipal Commissioners of the Suburbs regarding the registration of births and deaths. The Chairman and the Commissioners were, it appeared, decidedly of opinion that some provision should be made for procuring these statistics of births and deaths. His Honor believed that as far as their municipality and probably some other towns similarly situated were concerned, they were right in thinking that some provision should be made for such registration. At the same time it was doubtful whether this Bill was in a shape suitable for making sufficient provision of that kind. The course taken by the Government was, that they almost despaired of getting reliable mortuary statistics from the whole country, and in order to obtain statistics somewhat reliable, we had selected certain specimen areas in Bengal, both town and country, and had attempted to obtain good mortuary statistics from those selected areas. From some areas we also proposed to obtain statistics of births; our hope being that in that way we might arrive at a correct conclusion of the birth and death-rate in the country,—a conclusion

which we should not hope to arrive at if we attempted to deal with the whole population of Bengal. The question therefore was, whether it would not be better to legislate for all these localities, and not only for towns under the several Municipal Acts. He thought on the whole it would be best to receive the report of the Committee which was now presented, but to ask the same Committee to consider the letter of the Suburban Municipality and make a recommendation expressing their opinion on the subject. If the Committee should be of opinion that a provision of that kind would be with advantage incorporated in this Bill, it should be referred back to them with the view of carrying out that change. If the Committee should be of opinion that the subject should be dealt with separately, we should be prepared to introduce a Bill carrying out that view which on examination might be found prudent and sufficient for the purpose.

The question that the letter from the Municipal Commissioners of the Suburbs be referred to the Select Committee, and that the Committee be requested to express their opinion on the provision of law suggested by the Commissioners, was then put and agreed to.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. BERNARD said he was requested by the hon'ble member in charge of the Bill to amend the law relating to embankments and water-courses, who was unfortunately unable to be present at this meeting, to state that it was his intention to postpone the motion which stood in his name on the list of business. Mr. Schalch was at present not fully prepared to explain to the Council the schedule of embankments which the Government was bound to maintain. When the information on the subject was ready, he hoped to circulate it to the members, and in the meantime it was proposed to postpone the motion before the Council. MR. BERNARD understood that the hon'ble member on his left (Moulvie Abdool Luteef) had also consented to postpone the amendment of which he had given notice.

SALE OF ABKAREE LICENSES.

THE HON'BLE MR. BEAUFORT moved for leave to bring in a Bill to amend Section 9 of Act XI of 1849, and Section 27 of Act XXI of 1856. He said those were two Abkaree Acts, one referring to Calcutta and the other to the mofussil. The Board of Revenue had lately determined to put up to public auction licenses to hold abkaree shops. But a doubt had arisen whether the wording of these laws would justify the Board in selling licenses by auction. Under the strict wording of the law, the Board must first fix the price to be paid for a license, whereas the price would be fixed by the bidding if they were sold to the highest bidder. And therefore he would ask the Council for leave to introduce a short Bill, the object of which was to enable the Board of Revenue to sell such licenses by auction. The Bill was not printed yet, but he might say that he merely proposed to introduce two new sections in lieu of the two sections referred to in the title of the Bill. The law of the mofussil in one section appeared

to permit such sales; but in Section 27, so far as it referred to the sale of European spirits, a difficulty arose on the wording, and the same was the case in Section 9 of the Calcutta Act XI of 1849. He had in the list of business a notice that he intended to ask the President to suspend the rules for the conduct of business in order that the Bill might be at once read in Council. But as it appeared that there was no need of precipitation in the matter, he would not propose to hurry the action of the Council. He would not therefore ask for the suspension of the rules, but would now merely move for leave to bring in the Bill.

His Honor the President said, although this Bill was a small Bill, it was a Bill which touched upon an extremely important subject. It was not only a subject of great importance, but it was a subject of great complication and great difficulty. It was a subject which had puzzled the Legislature of England for a long time past, and which puzzled us now. He was sure that hon'ble members within the walls of this Council, and others outside, who had the welfare and good of the country at heart, must be convinced that nothing was so desirable as to check the excessive consumption of spirits, and with that view the abkaree or excise system had been worked. For some time past we had been anxious to check the growth of consumption, and to remove the imputation of making the vices and weakness of the people administer to the increase of the revenue. The general principle of the measures of Government in this respect had been, as far as possible, to decrease the consumption and increase the tax upon spirits. Considering that a tax upon vices was the most legitimate of all taxes, if by decreasing the consumption we obtained the same or even a smaller revenue, we would be doing a great good to the people. The course for some time adopted was that taken in England, namely, to restrict the number of licenses. But that system was necessarily accompanied by one considerable difficulty, namely, that as the number of licenses was decreased, so the value of the licenses was increased. You had a large publican interest all over the world, and as licenses increased in value, the result was great jobbery and difficulty in regard to the disposal of those licenses. All those who had to do with English politics, general or social, were aware that in England there was no subject of political jobbery so great as the system of licenses to publicans. The number of licenses being limited and valuable in proportion, it followed that it was a matter of favor to give a license, and that became the subject of great political and social jobbery. Although in this country jobbery to such an extent did not prevail, still here also we were liable to jobbery of one kind or another, and the Government wished, whilst obtaining a legitimate revenue from the sale of spirits and checking the consumption, to remove the possibility of jobbery as far as it could be done. Consequently we had thought it right to attempt the proposed system of selling licenses, which possessed one noted advantage, that favor should be shown to no man; that the number of licenses should be limited; that the number being so limited, the benefit of holding a license should be put up to auction, with a proviso that the purchaser should be a man of respectability. That system had been attempted in several mofussil districts. The general abkaree law of the

mofussil, passed in 1856, did, as the hon'ble member had told the Council, admit of that system ; but when we came to apply it to Calcutta, where under our own eyes the experiment could best be tried, we found that the law by its letter did not make provision for a system of that kind, but laid down one fixed and rigid rule, that the price for a license should be laid down by the Board of Revenue. We were not aware that our hands were tied up, and licenses were advertised for sale. When the matter was pointed out, it was determined that licenses should be granted only for three months. That would afford time to enable the Council to consider the question. The Bill was designed to untie the hands of the Government so as to permit them to do in Calcutta what they could do in the mofussil, namely, to put up licenses to auction and give them, not as a matter of favor, but to the highest bidders, provided they were respectable men of approved character. In the general Abkaree Act, although provision was made for the sale by auction of licenses for country spirits, no such provision was made for the sale of European spirits. It was well known that of late years a low class of brandies had been imported to compete with country spirits, and it was desirable that licenses for the sale of these spirits should be put upon the same footing. The Bill provided for these two points. It provided for the trial of the system of sale by auction in Calcutta, and put foreign spirits on the same footing as country spirits in the mofussil. It was a small Bill, and would, he thought, most likely meet with general approval. But all over the world the publicans were known to be a powerful body. They held a valuable interest in their hands. The monopolists who had valuable interests would no doubt strive to defend them. He could not hope that the Bill would be passed without opposition on their part. He would not precipitate the consideration of the Bill, but he trusted the members of the Council would, considering the great importance of the matter, give it their best consideration, and that we should come to a just and wise decision undismayed by the cries of monopolists or any one else ; we should do what was best for the country in general, for morality, and the good of the mass of the people.

The motion was agreed to.

The Council was adjourned to Saturday, the 8th instant, at 11 A.M.

Saturday, the 8th March 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble F. L. BEAUFORT,
The Hon'ble V. H. SCHALCH,
The Hon'ble C. E. BERNARD,
The Hon'ble MOULVY ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble B. D. COLVIN,
The Hon'ble T. M. ROBINSON,
The Hon'ble F. F. WYMAN,
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR,
and
The Hon'ble BABOO DIGUMBER MITTER.

AMENDMENT OF THE ABKAREE ACTS.

THE HON'BLE MR. BEAUFORT moved that the Bill to amend Section 9 of Act XI of 1849 and Section 27 of Act XXI of 1856 be read in Council. He said that as at the last sitting of the Council he had sufficiently explained the object of the Bill, he would not trouble them with any further remarks at present.

THE HON'BLE BABOO DIGUMBER MITTER said:—"So far as the proposed amendments aim at preventing jobbery in the disposal of licenses, I think they are calculated to do so most effectually, and they have therefore my hearty support. But there are other and very important questions raised in the speech delivered by your Honor at the last sitting of the Council, upon which I wish to be permitted to address a few words. Your Honor is reported to have said—for I was unavoidably absent on the occasion—that the primary object of the proposed amendments in the Abkaree Acts, was to put down the growing consumption of spirituous and fermented liquors—a necessity which has also been seriously felt by, and has since some years engaged the earnest attention of, some of the best men of our community.

There can be no question, Sir, that the Hindoos, especially the higher classes of them, were at one time noted for their abstemiousness, due entirely to restraints imposed by our religion against the use of intoxicating drinks. But from various causes, of which the spread of English education and ideas are perhaps the principal, the stronghold which religion had on the minds of the people is gradually but steadily weakening, especially amongst the higher classes. It is, therefore, a matter of the highest gratulation to all well-wishers of the country that our rulers are determined, even at the sacrifice of revenue, to supplement the efforts of religion, by means of legislation, in checking the spread of drunkenness. But, Sir, however much we may deplore, we cannot shut

our eyes to the fact that in this hot and enervating climate a great yearning has, from the earliest ages, been manifested for some kind of stimulating drinks, and hence it is that, as a concession to this national craving, our legislators of old were compelled to modify the total abstinence ordinance of our religion by sanctioning the use of spirituous liquors at certain stated days of the month, and in strictly regulated doses, in the case of those who manifested a strong desire for drink, and in whom the religious injunction of total abstinence was found to be inoperative. But the maxim that it was easier to abstain altogether from, than to be moderate in, the use of intoxicating drinks was soon exemplified, and the excesses committed by the Bamacharees may be said to have acclerated the advent of Choitunno, who again preached and enjoined total abstinence, and succeeded in a remarkable degree in checking the growth of drunkenness. But however greatly Choitunno and other religious chieftains who had preceded him might have contributed to stop the consumption of spirituous liquors, they do not seem to have ever taken heed that the popular craving was being satisfied in another way, that is, by the use of *subjee* and *ganja*. In fact, they seem to have encouraged their use, in order more effectually to check the use of intoxicating drinks; and there is no denying the fact that both *ganja* and *subjee* as well as opium are much more extensively used in this as well as the North-Western Provinces than intoxicating drinks. I have not had statistics at command to satisfy myself from figures what effect the increased duty on liquors has had on the consumption of *bhang*, *ganja*, and opium, but I can say of my own personal knowledge that the use of opium is fast spreading amongst the respectable classes of my countrymen, and in the majority of cases as a cheap substitute for spirituous drink both in Calcutta and other populous towns in Bengal. The injurious effect of opium and *ganja* both upon the *physique* and intellect is, I believe, never questioned. One may however satisfy himself on that point by a visit paid to the Dullunda Lunatic Asylum and some of the many opium-smoking public houses in Calcutta. The former will show that more than half the number of such cases treated therein owes their origin to *ganja*, and the latter will present the sad spectacle of some of the best specimens of humanity reduced to a state of utter helplessness, both bodily and mentally, by a few months of opium smoking. I do not wish to express myself dogmatically on this difficult problem one way or the other. If possible, I would put down the use both of intoxicating drugs and drinks. But I would in all humility submit for the serious consideration of our rulers whether, in our attempt to check the consumption of intoxicating drinks by making it an expensive luxury, we may not be encouraging the spread of a cheaper substitute for it, and one perhaps more deleterious to the healthy development of our species and less conducive to longevity."

THE HON'BLE MR. WYMAN said, while he thought that the proposed amendment of the abkaree law would lead, to a certain extent, to the attainment of the desired object, he was sure that they ought to go farther than they did. The amendments seemed to him to be confined to giving the Board of Revenue

a little more discretion in the granting of licenses than they at present possessed. He thought it was a patent fact in Calcutta that the working of the Act was defective, not only in that respect, but in many others; and he should be glad to see a somewhat more comprehensive series of amendments proposed—in fact, a general amendment of the law, for the advantage both of the people and the State. The system, for instance, of granting licenses was found to operate most inadequately; for whatever care might be taken in granting licenses to none but respectable men, it frequently happened that the man who got the license was not the man who held it. There was a system of secret transfers of licenses which ought, as far as possible, to be checked, for the traffic in spirituous liquors was at present carried on greatly to the detriment of the morals of the people, and, he might say, also to the loss of health. You had only to walk round the streets of Calcutta to see an immense number of low grog shops filled with a low class of Europeans and natives, where the most poisonous stuff was sold in the name of brandy, causing death to our sailors. There seemed to be no control over such establishments; and he thought some amendment of the law which would enable the excise authorities to exercise a better control over these establishments than now existed, would be very desirable. He hoped the Committee would see fit to take into consideration the salient points indicated, and would call for such information as would enable them to suggest remedies for improvement. He thought if that were done, the amendments proposed would greatly improve the existing law, and confer great benefit on those classes who were suffering so much under the existing system of granting licenses.

THE HON'BLE MOULVIE ABDOOL LUTEEF said he was also of opinion with the hon'ble member who had just spoken (Mr. Wyman) that if the law was to be amended at all, there were other points also in the existing Acts which deserved to be taken into consideration, and he thought that if this Bill were referred to a Select Committee for the consideration of the points contained in it, the Committee should be empowered to take into consideration any other provisions in the existing Acts which required amendment.

THE HON'BLE MR. BEAUFORT said in another motion which he should make on that day he proposed to ask leave to introduce a Bill to amend several defects in the excise laws. If leave were given, he should propose that both the Bills be referred to the same Committee, and it would doubtless be competent to such Committee to entertain any other proposals for amendment which any hon'ble member might submit for their consideration, and to report their opinion to the Council. As no substantive motion had been made by either of the hon'ble members who had addressed the Council, he would not discuss the subject further on the present occasion.

HIS HONOR THE LIEUTENANT-GOVERNOR said he was sure the Government had every reason to thank the hon'ble members who took so thorough and practical an interest in this most important subject. He had often had occasion to notice the practical character of the assistance rendered to the Government by

this Council, and especially the obligations under which the Government were to the independent members, who so cordially gave their services and took so lively an interest in matters of such great importance to the whole community. He was sure the Council had listened with great interest to the observations which had been made. He thought the hon'ble member in charge of the Bill had put the matter in a light which would satisfy the Council when he said that he was about to introduce another Bill which would deal farther with the provisions of the Excise Acts, the object being that the two Bills should be referred to the same Committee in order that they should be considered together. The second Bill would contain some modifications of the existing law which had been suggested by the responsible advisers of the Government and the Board of Revenue. And he might say, on behalf of the Government, that if those hon'ble members would give their assistance in Committee we should be happy to consider any other points that might be brought forward and to amend these laws as far as they could be amended with advantage to the community. Some reflections not altogether of an agreeable kind had been suggested by the hon'ble member on the right (Baboo Digumber Mitter). He said that with English education also came in the love of drink; with English education and Western habits the love of drink had, he said, invaded this country. But it was some consolation for us to learn that although the love of drink might be baneful, it was not so baneful as some other habits indigenous to the country, and not attributable to the influence of English education. The hon'ble member was, he believed, right in thinking that the consumption of some of the intoxicating drugs common to the country was more deleterious than the consumption of spirituous liquors. With respect to opium the hon'ble member was apprehensive that amongst the higher classes its consumption was extending. But His Honor was glad to be able to give the hon'ble member this assurance that he had reason to believe that amongst the masses of the people the consumption of opium did not very largely increase. It appeared to him that as respects opium it was very much a matter of race. The Indo-Chinese race had a natural proclivity for the consumption of opium, but not so the Aryan race, which was rather given to strong drinks. At any rate from inquiries made in the opium-cultivating districts, and from many qualified persons, he had satisfied himself that in the opium districts, where the facilities for obtaining cheap opium were unlimited, where it was in the power of almost every man to consume opium ready at his hand, the consumption of opium did not spread amongst the cultivators and people generally. It had been a relief to his mind to receive that assurance from many qualified quarters; for it had been an oppression and a dread to him that possibly the cultivation of opium in this country might lead to an extension of the consumption of that most noxious drug by those engaged in its cultivation and manufacture. He was glad, then, to be able to say that it was not so, and that amongst the opium cultivators as a body there was no general tendency to the consumption of opium. Then there was the other very deleterious drug *ganja* or *bhung*. He believed that the hon'ble member had rightly informed the

Council that it was a drug of a peculiarly noxious character, leading to madness and other evils. But His Honor was glad to be in a position to say that the effect of the existing system of granting licenses for the sale of *ganja*, as superintended by the Board of Revenue, had been to increase the price of the drug and diminish its consumption. Our figures showed that the consumption of *ganja* was not so great at the present time as it was some years before, whilst the duty derived from its sale was larger and the revenue greater. Therefore we had succeeded in obtaining with a smaller consumption a larger revenue. A revenue of that kind, derived from a decrease in the vices of the people, was of all revenues the most advantageous to the country. He trusted that we would follow that course as much as possible, and that we should be assisted by the labors of hon'ble members interested in the subject if they would give us their assistance in modifying the provisions of the law in those points which practical experience had shown to require modification. Both drugs and spirits were most deleterious, and any thing that we could do to limit their consumption ought to be done. He trusted it would be understood that our object was to limit the consumption by all the means in our power, and at the same time to raise the largest revenue possible from a diminished consumption, so that the country might be benefited by the diminished consumption as well as by an increase of revenue.

The motion was agreed to.

THE HON'BLE MR. BEAUFORT moved that the Bill be referred to a select Committee consisting of the Hon'ble Mr. Schalch, the Hon'ble Moulvy Abdool Luteef, the Hon'ble Mr. Wyman, the Hon'ble Baboo Digumber Mitter, and the mover, with instructions to report in a fortnight.

THE HON'BLE MR. SCHALCH said that if the Committee were to take into consideration amendments amounting to a general alteration or improvement of the law, they would require a very much longer time than a fortnight within which to submit their report. Possibly this was a case in which it was desirable to confine the Bill to the amendments contained in it. The Committee might report on the Bill as it stood, and when the Bill, which was next in the list of business, was referred to a Committee, they might undertake a general consideration of the subject.

HIS HONOR THE PRESIDENT observed that at the end of the fortnight we should know what the views of the Committee were, and if it should be necessary, the Council might grant the Committee an extension of time.

The motion was agreed to.

AMENDMENT OF THE ABKAREE ACTS.

THE HON'BLE MR. BEAUFORT moved for leave to bring in a Bill to amend Act XI of 1849, Act XXI of 1856, and Act XXIII of 1860, the two excise laws in force in Calcutta and the mofussil, Act XXIII of 1860 being only an amendment of Act XXI of 1856. The object of this Bill was to amend certain defects which were believed to exist in the excise law. Perhaps he should explain why two Bills were brought forward instead of one on the

same subject. Since he proposed at the last meeting to introduce a Bill to amend two sections of two Abkaree Acts, it had been suggested that the opportunity should be taken to amend certain other defects in the excise laws which had been pointed out by the Board of Revenue some time ago. The leave, however, which he had obtained at the last sitting of the Council to introduce the first Bill did not refer to any other defects in the Abkaree laws than the specific points which that Bill was designed to meet, and therefore it appeared to him that the most proper course to take was to embody the other suggestions for the amendment of the excise laws in a separate Bill, and to ask leave to-day to introduce it, and subsequently to move that both Bills be referred to the same Committee, in order that they might be considered at the same time and amalgamated, if the Select Committee should see fit to do so.

The object of this second Bill would be found to be clear enough on a perusal of the several sections, but he would shortly explain them. The first Section referred to a difficulty which the Board had experienced in restricting the cultivation of plants producing intoxicating drugs, and regulating the disposal of the drugs. By one of the sections of the present Act XXI of 1856, Section 33, the Board of Revenue was empowered to place the cultivation, preparation, and storing of those plants and drugs under supervision; but the section contained no provision imposing any penalty for disobedience or contravention of the rules prescribed by the Board. It was therefore scarcely possible to enforce those rules. By another section of the same Act, cultivators of intoxicating drugs were expressly permitted, without a license, to sell such drugs to a licensed vendor, or to hold in their possession any quantity of such drugs. Therefore it was easy at any time for the cultivators to dispose of the drug in any way they pleased. A cultivator might have cultivated the plant and stored the drug with the full knowledge of the excise officer; but if the excise officer were to inquire the next day what had become of the drug, he might be told that it had been destroyed by white ants, or that it had disappeared, and he would be perfectly helpless to call the cultivator to account in any way. That was a state of things which ought not to exist; and the first two sections of the Bill were designed to remedy it. By the amended Section 33 it is proposed to give power to the Board of Revenue to prescribe rules for the restriction and supervision of the cultivation of plants producing intoxicating drugs, and to grant licenses to persons for their cultivation and preparation, so that it would be punishable to cultivate, prepare, store, possess, purchase, or transport any intoxicating drug without an express license, and every person storing it would be responsible for the proper disposal of it.

The rules to be made would be subject to the sanction of Government, and the Board was empowered to provide a penalty for any contravention of them. The revised Section 50 protected persons holding licenses from the operation of the two preceding Sections 48 and 49, which provide penalties for the illicit manufacture, or sale, or possession, of such drugs; but it imposed a penalty on cultivators who part with the drug to other than licensed vendors or failed to account or any portion of the quantity stored.

The words had purposely been made large in order to cover every kind of transfer, and to give a complete control to the excise authorities.

Section 3 of the Bill referred to the punishment of persons guilty of offences against the excise law. The present law provided for the imprisonment of an offender in default of payment of the fine, and it was proposed to provide further for the recovery of the fine by sale of personal property. Under the general criminal law the Magistrate was empowered both to imprison in default of payment, and also to enforce payment of the fine; and the section proposed to apply the same rules to offenders against the excise law.

The Board of Revenue had found reason to believe that the manufacture of fermented liquors, other than the taree, pachwai, and malt liquor mentioned in this law, was increasing; as for instance, the sharbat-bahar, which was said to be made from molasses, and a wine made from the fruit of the jaman-tree. Such liquors ought to be brought under the same rules which applied to taree and pachwai, and with that view Section 4 of the Bill had been framed.

Section 5 of the Bill referred to Calcutta. Under the present law, Act XI of 1849, the excise law in Calcutta, wholesale dealers in spirituous wines and liquors were not required to take out licenses at all. In other parts of the country, in the whole of Northern India, in the North-West, and Central Provinces, in Oudh, in the Punjab, and in Coorg, wholesale dealers were required by Act X of 1871 to take out licenses, and the same burden was imposed on the wholesale dealers throughout the mofussil in the Lower Provinces by Act XXI of 1856. Therefore it seemed anomalous that in Calcutta alone the wholesale dealers should be exempted. The object of Section 5 of the Bill was to place wholesale dealers in Calcutta in the same position as other wholesale dealers in other parts of the country.

The last section of the Bill provided for the imprisonment of convicted offenders under the excise law in the criminal as well as in the civil jail. Under the present law, such persons could be imprisoned in the civil jail only. Abkaree and police officers guilty of specified offences might be confined in the criminal jail, but in all other cases arising under the excise law out of Calcutta, the imprisonment must be in the civil jail. The object of this distinction was not very apparent. No doubt there were cases in which it would be unjust to confine a man amongst criminals. The possession of a small quantity of taree, for instance, or other excisable spirit or drug, was not an immoral offence, and ordinarily a Magistrate would think imprisonment in the civil jail quite sufficient to meet such a case. But in the case of confirmed offenders, and in cases in which it was obvious from the acts proved that imprisonment in the civil jail would be an insufficient punishment, the Magistrate ought to have a discretion to imprison offenders in the criminal jail, and therefore the proposed section left it entirely to the discretion of the Magistrate to imprison offenders in either one or the other jail as the circumstances of the case might seem to require.

He had explained the several sections of the Bill, and he would now ask for leave to introduce it.

The motion was agreed to.

THE HON'BLE MR. BEAUFORT applied to the President to suspend the rules for the conduct of business in order that the Bill might be read in Council that day, and referred with the other Bill on the same subject to the same Committee at once, so that no time might be lost in the submission of their report.

HIS HONOR THE PRESIDENT declared the rules suspended for the purpose stated by the hon'ble member.

THE HON'BLE MR. BEAUFORT then moved that the Bill be read in Council.

The HON'BLE MOULVIE ABDOOL LUTEEF wished to say one word with reference to the section of the Bill which permitted sentences of imprisonment for offences committed under the Act to be either in the civil or criminal jail. Most offences under the Abkaree law were punishable with fine commutable to imprisonment in the civil jail. If by this Bill it was intended to make some of those offences punishable with imprisonment in the criminal jail, he thought that the offences so punishable should be clearly pointed out; otherwise the adjudicating officers would be placed in a difficult position, and danger might be apprehended that what was intended to be mere imprisonment in the criminal jail might lead some officers to think that they were empowered to award rigorous imprisonment as well. He thought that this point ought to be clearly laid down in the Bill by the Select Committee. Many of the offences under the Abkaree law were committed by servants of Abkars and other men selling intoxicating drugs and liquors; but according to the law, the persons holding Abkaree licenses were the persons who in such cases were punishable with fine; they were held responsible for the acts of their subordinates and servants, and it would be very hard to punish such men as criminals. He, therefore, thought that the power of awarding imprisonment in the criminal jail, or with hard labor, for non-payment of fine, should be exercised with great care.

THE HON'BLE MR. BEAUFORT said the point noticed by the hon'ble member would be carefully considered by the Committee. He would only now observe that the discretion given to the Magistrate of awarding imprisonment in the criminal jail did not carry with it the power to subject the offender to hard labor. The two kinds of imprisonment were clearly defined in the Penal Code, and unless the power of awarding rigorous imprisonment were given by the law, the Magistrate could sentence the offender only to imprisonment without labor.

HIS HONOR THE PRESIDENT observed that he had no doubt the Select Committee would fully consider whether it would be desirable to modify the section so as to define what offences should be treated civilly and what offences were deserving of criminal punishment. It appeared to him that there were some offences against the Abkaree laws which it would be most necessary to treat as criminal offences; but it would be for the Committee to decide what offences should be treated in the one way and what in the other.

The motion was agreed to.

THE HON'BLE MR. BEAUFORT moved that the Bill be referred to the same Committee as in the other Bill just read in Council, with instructions to report in the same time, and to amalgamate the two Bills, if they should think it desirable

to do so. If it should be found necessary to prolong the time, leave could be given afterwards by the Council so as to enable the Committee to consider fully any other questions which might be brought forward by any hon'ble member.

The motion was agreed to.

EMIGRATION TO THE LABOR DISTRICTS.

THE HON'BLE MR. BEAUFORT moved that the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract-labor and service, be read in Council. He had troubled the Council on two previous occasions with remarks on the nature and jobects of the Bill, and he did not think he need say anything more at present.

THE HON'BLE MR. ROBINSON said, he thought the hon'ble member, in introducing this Bill to the Council, and describing it in a great measure as a re-arrangement of the existing law, and as an old friend in a new dress, had ascribed to it a character of innocence that it could not be considered to possess. The provisions of the Bill were so numerous and went necessarily so very much into detail, that it was a matter of considerable time and labor to examine them thoroughly, and that labor was increased by the necessity of comparing them with the provisions of the existing Act, with the working of which we had become accustomed. He had devoted considerable time to the consideration of the provisions of this Bill, and a great many gentlemen interested in the tea districts had done the same, and they all looked on them with considerable apprehension. He regretted very much that it should be considered necessary at all to legislate again on this subject. It was done in 1863, it was done in 1865, and it was done in 1869; and on the last occasion the subject received a great deal of attention, and excited a very great deal of discussion. The last Act passed had now been in force scarcely three years; both the laborers and planters and all parties concerned in the cultivation of tea were gradually becoming accustomed to its conditions; whatever obstacles there might have been to its smooth working was being gradually got over, and we had no reason to suppose that the Act had not been working favorably. But he regretted more the introduction of the Bill, because the whole tenor and tendency of it was to add to the expenses and to the difficulties and restrictions imposed on the tea planters. The fees were largely increased; the whole system of engaging emigrants was changed and made more difficult. The conditions under which emigrants were to be conveyed to the tea districts were considerably altered, and the conditions for dealing with them when there were also altered; and all to the same purport. It would appear to anybody coming to this subject now for the first time, that the cause of the introduction of this Bill must be that the previous legislation had not been found sufficient to provide for a fair system of recruiting—the proper protection of the emigrant on his voyage to the tea districts, or when he had arrived there and was at his work. That, he could assure the Council, was not his own opinion alone. Every gentleman connected with the tea districts to whom he had spoken had made the same remark to him. They all asked with one voice, "What is the meaning of this

new legislation? What is the object of it? What have we done to convince the Government that more restrictions are necessary to be placed upon us for the protection of the coolie emigrants to the tea districts? We were in great hopes when the last Act was passed that with it what was our one great desire should be accomplished, namely, that we should be left in peace and rest,—that peace and rest which it was universally thought by gentlemen of position and standing in Calcutta, who were engaged in commercial pursuits and largely interested in the cultivation of tea, we had most fairly earned by our humane and fair treatment of the laborers, and by our loyal endeavours to carry on our work according to the conditions of the Act, although we objected to many of them as too restrictive."

Now, referring to the Bill itself, it was of course impossible and not desirable that he should go through it section by section at this stage of the discussion. He would therefore only make a few remarks in support of the general ones he had made as to the effect of the Bill. And, first, in regard to the engagement of the coolies: the provisions of the Bill all had one tendency, which was to make the system of recruiting by garden-sirdars, which had been, he believed, a very fair one, and free from many of the evils attendant on the system of recruiting by contractors, more difficult in every way, if not absolutely impossible. To mention one or two things. The Bill provided that the owner or agent of an estate should give the garden-sirdar a power of attorney. He was to have a certificate which he was to show to the Magistrate of the district in which he was about to recruit, and he was also to have a power of attorney which was to remain in force for a period of six months. Now, Mr. Robinson really did not see how anybody could with any confidence or any safety trust a document like a power of attorney to a garden-sirdar who was himself nothing but a coolie. Then the next difficulty was this, that when the garden-sirdar arrived at the district in which he was to recruit, he was to present himself to the Magistrate. There his credentials were to be examined, and the Magistrate was to inquire into the facts stated in the certificate. The garden-sirdar and the Magistrate might be in the remotest part of Chota Nagpore; the facts were, perhaps, in the remotest part of Cachar or Assam. Mr. Robinson therefore wondered by what possible process the Magistrate was to inquire into the facts set out in the documents shown to him, except by a reference to Cachar or Assam for information, the receipt of which would take very nearly the whole of the six months allowed for the remaining in force of this certificate and power of attorney. Then another point was, that under this power of attorney, assuming that anybody was so rash as to give a power of attorney to a man of that class, the sirdar was to sign the contract with the laborer, instead of its being signed as at present by the agents of the tea garden in Calcutta, or the contractor or some responsible party in Calcutta. That was a power which no tea planter could possibly put in the hands of the class of men employed as garden-sirdars. And it seemed to Mr. Robinson that this provision alone (there were many others almost equally objectionable) would make it perfectly impossible for the system of recruitment

by garden-sirdars to be continued. He was not aware that it had been said that recruiting by garden-sirdars was in any way objectionable. All the information had showed that it had been very successful; the coolies so recruited had been healthy and strong, they had been efficient when they arrived at the gardens, and the system on the whole had worked satisfactorily in every way.

We next came to the question of the transport of emigrants; and here again the provisions of the Bill were made more stringent than they had been hitherto. In fact, it seemed to him perfectly clear that if the restrictions in the Bill were made law, no emigrants would ever be conveyed to the tea districts by steamers, and the whole transport of emigrants must be made by boat. It would appear from the manner in which the vessel was to be controlled in the interests of the coolie, as if there were no other human beings being conveyed in the steamer, and no other interests concerned in the voyage. The owner of the vessel, the owners of the cargo, private passengers, and even the officers of the Government who had to rejoin their appointments possibly after leave and with no time to spare, were all liable to delay and detention, not on the responsibility of any person on board who was able to judge of the necessity of such detention, but at the discretion of the Magistrate on shore at every station where the vessel was bound to stop, and the Magistrate was entitled to come on board, and on the most cursory inquiry, and the fact of two or three emigrants happening to be ill, was entitled, at his discretion, to detain the vessel for an indefinite period. There was no rate of passage which the owners of steam vessels would undertake to charge for emigrants with those restrictions in full force which planters could possibly afford to pay for conveying emigrants to the tea districts; and the result would therefore be that the transport of emigrants by steam vessels would altogether cease. Those which he had mentioned seemed to him especially unnecessary restrictions. Surely, if people were travelling in steamers to the tea districts, and it was necessary that their health should be most carefully looked after, the natural course would be to give that protection on board, by providing for the emigrants as efficient medical attendance as it was possible to obtain; and from inquiries which he had made, he believed that the most efficient medical attendance could be got. And he believed that greater and more complete protection could be obtained by giving them that medical care on board the vessel itself during the whole voyage, than by the casual protection afforded by the Bill in the powers given to Magistrates at the places where the vessel might be bound to stop. Setting the question of humanity aside, no one could be so much interested in the health of the emigrants as the planters, who had paid for their recruitment and transport, and they were perfectly ready to pay any reasonable expense for providing the most efficient medical attendance that could be got. Now, he would beg the members of the Council to consider this point as one of the most serious importance, and to weigh what he had said on the subject; and he thought hon'ble members would agree with him that the plan he proposed for the protection of the emigrants whilst in transit on board steam vessels was far better than that contained in the Bill.

Then, to leave the question of transport to the tea districts. The only point remaining to be noticed was that which dealt with the emigrant after his arrival at the place of destination. As to that he had nothing very particular to remark except that there was a general increasing of the expenses, and a general tightening of the restrictions imposed on the planter, as if sufficient protection had not hitherto been given to the emigrant; the only point to which he would particularly refer was that the Bill introduced a system of vicarious punishment, which appeared to him to be new and scarcely fair, namely, the making penalties and fines inflicted on servants when absent from the control of their masters realizable upon the gardens of those whom they served. It scarcely seemed to him to be a fair principle that any man should be held responsible for the acts of his servants when hundreds of miles beyond his control to the extent proposed by this Bill. There were two or three sections in the Bill that provided for such a mode of punishment in different ways, and he thought they required to be taken into serious consideration.

On the occasion of the passing of the existing Act the principal point of discussion with SIR WILLIAM GREY, the late Lieutenant-Governor, and which was also the subject of a petition from the Landholders' Association to the Viceroy, was the extension of the emigrant rules to the laborers so long as they remained in the tea districts. He was led to believe from what fell from His Honor the President on a former occasion that all such restrictions were to be removed; but as far as he saw, those restrictions were only removed in respect of time-expired emigrants, who might enter into new contracts for periods not exceeding six months. As far as he knew, there was no such thing in the tea districts as an engagement for six months. There was no process of tea cultivation or manufacture or anything connected with tea in which the services of laborers for a period of six months were engaged, nor was it at all likely that coolies would ever wish to enter into such engagements, and no engagements were entered into for less than a period of one year. That he mentioned as an objection which occurred in reference to the provisions of the Bill upon this point, but he did hope—he might be mistaken, or there might be some mistake in the apparent intention of the Bill as printed—that that provision was intended to apply so as to exempt all laborers re-engaging for any period of service longer or shorter. He did hope that the Act would be applied in a large and liberal spirit, and that it would be considered that when a man had once emigrated to the tea districts, when he had gained experience of the country, of the climate, of the work to be done, and of the master whom he served, when he deliberately elected to make that country his abode, he would be left to the protection of the laws, whose protection he enjoyed in common with every one else in every part of the country. That he trusted would be the real intention shadowed forth in the remarks of His Honor the President to which Mr. Robinson had referred.

A great deal had been said of late on the subject of precipitate legislation and Acts being passed affecting particular portions of the community without

affording them the fullest opportunity for discussion. He was perfectly aware that no Act of this Council had ever had that complaint made to it. Three years ago he objected very strongly, on behalf of the Landholders' Association, to a Bill affecting European British subjects, which was brought into Council at Simla, read, passed through Committee, its title changed, and passed into law in about ten days. In the case of this Bill Simla must be looked upon as an abstraction. Calcutta was quite a Simla to the tea planters in remote parts of Cachar and Assam. He had put the Bill in circulation the very day he got it; but even up to this time there had hardly been time for copies of the Bill to arrive at many of the tea gardens; and it would take a very long time before gentlemen interested in the subject would be able to consider the Bill carefully and send down statements of their views to their representatives in Calcutta. He would therefore suggest as an amendment that instead of the Committee being required to report on the Bill in one month, the time for the submission of the Committee's report should be extended to three months.

[His Honor the President observed that an amendment of that kind would more properly be made at a subsequent stage of the proceedings.]

The Hon'ble Mr. Robinson continued.—He did not intend to make any charge of precipitancy or to suggest that there was any desire to pass any Bill in this Council without the public being allowed the fullest opportunity of examining its provisions and expressing opinions upon them. He merely wished to state the circumstances under which it appeared to him that this Bill would require a very long period for consideration. Whilst he regretted the introduction of any Bill at all on this subject, he regretted also its being brought in at a late period of the sittings of the Council, and he hoped it would not be attempted to pass this Bill into law until the commencement of the sittings in the ensuing cold season.

The Hon'ble Moulvy Abdool Luteef said.—He begged to express his cordial approval of this Bill, which, in his humble judgment, went a great way in solving the one difficulty peculiar to Bengal, namely, that of affording that degree of mediation between the employers of labor and their imported laborers which would seem fair to both the interests concerned. He had paid particular attention to some portions of the Bill, and considered them a decided improvement upon the old law of 1863 and 1870. The introduction of the new system of recruitment by means of garden-sirdars, as explained in chapter 3, Part II, was a new feature in the system of providing coolies for the tea-making districts of the Lower Provinces, and one which he thought should be far more satisfactory to the planting body than the old much-abused agency of recruiters.

If planters understood their own interests, it was, he thought, clear to him that gradually the mode of recruitment by means of garden-sirdars would supersede every other mode hitherto practised.

It was also a great advance to have got rid of the medium of the Superintendent of Labor Transport in the granting of licenses to recruiters and the substitution of the District Magistrate in his stead.

But the point on which he considered the Bill to be entitled to the highest commendation was that in which provision was made for the absolute closing up, so far as imported coolies were concerned, of those gardens in which the mortality was ascertained to have exceeded seven per cent. in twelve months, or five per cent. in three years. This was a bold decisive step in advance of the old law.

There might possibly be technical points here and there requiring alteration, but these could be easily discussed and rectified in committee.

THE HON'BLE MR. COLVIN said he need not supplement the speech of his hon'ble friend on his right with any lengthy remarks of his own upon the Bill now before the Council; Mr. Robinson had dealt with the subject far more forcibly and ably than Mr. Colvin could, but Mr. Colvin wished to state briefly the views with which he regarded both the general question of legislating anew upon the matter and the particular changes proposed to be introduced.

First, with regard to the general question. He had originally observed with some apprehension the notice of an intention to alter Act II of 1870. He was aware that that Act was the legislative result of the deliberations of the local Government and the Council for a series of years; he had been given to understand that that Act had been found to work well on the whole, to deal fairly and justly between the several classes to whom it applied, to subserve satisfactorily the purpose of encouraging by means of imported labour, while sufficiently protecting the emigrant, the extension of tea cultivation which had now become so powerful an element in the trade of the country, and he had not heard of any serious complaints or objections to the provisions of the Bill. Moreover, the Bill dealt with somewhat difficult problems of administration and complex questions of the relations between capital and labour, between employer and servants, and he felt considerable doubt as to the desirability of altering in any way a system which had scarcely been in practice long enough to be thoroughly tried, and of introducing the disturbing element of change into rules which had only been established long enough to become thoroughly known and understood. The hon'ble member in charge (Mr. Beaufort) had stated that certain defects had been found in practice to exist, but in the absence of any information as to the extent and importance of these defects, Mr. Colvin was scarcely able to satisfy himself as to the advantage of fresh legislation on the subject, even though he was ready to admit there was room for improvement.

Next, as to the particular changes. When the hon'ble member in charge asked leave to introduce the Bill, Mr. Colvin had received with satisfaction the assurance that the Council would recognise an old friend, with figure and fashion only slightly changed; when again the hon'ble member was about formally to present our former friend in his new costume to the Council, and to ask a Committee to report upon his present appearance, Mr. Colvin had felt it his duty to say that he thought it would be becoming to allow some of the old companions and acquaintances in the outside world to express their opinions upon his altered aspect, so as to ascertain if they were generally commendatory or critical. Speaking for himself, he must say that the changes proposed, though taken singly,

were not very great, yet on the aggregate they seemed to form a larger scheme of modification than the remarks of the hon'ble member had led him to expect, and they were some of them of a character just the opposite to what he should have expected. His belief was that the system of importing labor into the tea districts had now become sufficiently settled, and the relations of planters and laborers had been found to be so far mutually beneficial, and the needs of proprietors of gardens had now become so moderate in extent, that any change should be rather in the direction of relaxing previous rules than imposing fresh restrictions. He thought it would be admitted at once without discussing details that such restrictions would be imposed by the new Bill as it stood; such, for instance, as the wide power of control given to the local officers as to the licenses of contractors' recruiters—a power of control which up to a certain point was essential, but if carried as far as proposed, would probably stop such recruiting altogether; such again as the stipulations with regard to garden-sirdars producing powers of attorney from their employers, and their employers being made pecuniarily responsible for their proceedings,—stipulations which would certainly check rather than foster that system of recruiting; such again as the power to the local Government to prescribe and publish rules or regulations regarding sixteen separate subjects in connection with the working of the Bill—rules which it would be much better to define at once in a schedule; such again as the requisition as to steamers conveying emigrants awaiting the permission of the Magistrate to proceed at every station on the way—requisitions which would almost prohibit their conveyance at all by steamers; and such, finally, as the enhancement of fees and the reduction of the period for payment of arrears of wages.

On the other hand, the provision as to the inspection by medical officers at the port of embarkation of men recruited by garden-sirdars, appeared a very needful and proper provision, and the liberation from contract rules of the time-expired emigrant was a very desirable measure.

The Hon'ble Member, Mr. Beaufort, had been pleased to invite Mr. Colvin to be on the Select Committee to consider the Bill; he most willingly tendered any small services he could render in that respect, but he ventured to think the hon'ble member proposed a rather impracticable task in instructing the Committee to report in a month; he was quite sure that a number of papers would be, if they had not already been, received relating to the Bill, and it would be impossible to do justice to their consideration in so short a time. It was true, as the hon'ble member had said, that most of the principles of the Bill were settled when the last Act was passed, but as Mr. Colvin had taken occasion to say before, the introduction of the new Bill had re-opened the whole question on the public mind, and many of those principles would probably be discussed again; therefore he thought it would be more nearly three months than one month before the Committee could arrive at a satisfactory conclusion.

Lastly, he would say that in stating certain grounds of objection, both on general principles and as to special points, he trusted that the Hon'ble President and the Council, as well as the hon'ble member in charge, would acquit him of

any desire to check the due course of legislation; his only and sincere wish was to suggest caution in altering a course only recently marked out and hitherto followed in comparative if not complete safety, and if it be altered, to endeavour, so far as he could, to guide it in the right direction. If he could assist in doing this, he would be more than satisfied.

His Honor the President said, it was to him, as representing the Government, a subject of great regret to find that the Bill which had been laid before the Council had caused alarm to those interested in the great tea industry. It was but fair that he should inform the Council that we had received, too late to lay before the members in detail, a letter from the Chamber of Commerce, also conceived in a spirit somewhat hostile to the Bill which we had introduced. He felt somewhat disappointed by the receipt of that letter; he felt somewhat disappointed by the remarks of the hon'ble members who had just so forcibly and so ably spoken. He thought there was some misunderstanding in the matter. He was sure that the intention of the Government was not hostile to the planting interest; it was certainly not hostile to giving facilities for emigration to Assam and the other tea districts. For himself he would say that if it were possible, without a great sacrifice of human life and without a great sacrifice of human freedom, without injustice to the poorer and more ignorant classes, if it were possible so to regulate emigration as in a short period to treble the population of Assam, he should himself most gladly do so. He thought that if they could conduct emigration under safe rules which would be just to the coolies and also to the planters, emigration from the populous districts to the sparsely-populated districts of Assam and other tea districts would be the greatest possible object to be attained and a great advantage to all parties. He should be sorry indeed to suppose that our new legislation was designed to change the existing law in a manner unfair and disadvantageous to the great interest now developing those countries which had hitherto been given up to jungle and wild beasts. The object of the Government was nothing of the kind; their object was in no degree to deter emigration, but to facilitate emigration in a fair spirit and on fair conditions. The reason for introducing a new Bill was this, that the old Bill—the Bill passed in 1870—having been now some three years in operation, we had experience of its practical working, and we had seen that there were some points which practical experience had shown required amendment. Our whole object was to amend the existing law in those particular points; and our old friend had assumed a new face, because, having the advantage of the assistance of the hon'ble member whose skill and legal knowledge were great, we had taken the opportunity to re-cast the Bill in a shape in which we hoped it might be more easily understood and more easily workable to the benefit of the parties concerned. His Honor admitted now, and he admitted on a former occasion, that the changes which had been introduced in the Bill were not without importance; but at the same time he would say that their chief aim and object was not to alter and reverse previous legislation on the subject, but to amend and secure it in such a manner as to do justice to all parties.

One of the most important points in which the law required amendment was as to time-expired emigrants. He might say that after three years' trial the present law in regard to time-expired laborers had not worked at all; that we did not know what laborers were subject to the existing law, and what laborers were not subject to it. Our returns of laborers, ours means of inspection, our knowlege of the statistics and condition of the coolies subject to the law, were altogether vitiated and made of little worth on account of the extreme difficulty of working the present law in regard to time-expired coolies. That was one difficulty.

Another difficulty was that we had not attained the means of conveying coolies to the tea districts with safety to their health and reasonable precautions against excessive mortality. He deeply grieved to say that, under present circumstances, the mortality was still very excessive. He grieved to say that during the last year and this year we were called upon to meet cases in which excessive mortality from cholera had occurred in the steamers proceeding to Assam. He believed that the provisions contained in the Bill enabling the authorities to stop steamers were not new, but were a re-enactment of provisions which were found in the existing law, and which were now put in force. The hon'ble member alluded to the power of stopping steamers in transit as a novelty in the present Bill. He could only say that at present the authorities did stop them, and that they found it necessary to do so. He grieved to say that the very last instance, of which he had just received news, was that of a steamer which had got no further than Goalpara, the very gate of Assam, and had already lost 46 coolies from cholera. It was thought absolutely necessary that the steamer should be stopped, and that the coolies should be debarked and endeavours made to eradicate that terrible disease from amongst them. The present law did not enable us to deal sufficiently with such cases in all respects, and some amendments were necessary.

Another point was that a garden might be so unhealthy that it would be most unfair and most inhuman to force a laborer under a contract made at a time when he had no knowledge of the garden to remain in that garden. Possibly it could not be said that the garden was absolutely unfit for any human habitation, and yet it might be most unfair to force these imported laborers to remain there. These and one or two other points were points in respect of which we found the existing law required amendment. The Bill was drawn with the object of remedying these defects, and we had taken the opportunity to dress our old friend in a manner in which he hoped he would be recognised after a little further acquaintance. But we had not designed to legislate in a manner hostile to the tea interests.

When His Honor looked to the other points to which exception had been taken as showing that hostility to the tea interests which the hon'ble members seemed to apprehend, he could only say that as far as the Government was concerned they were innocent of the designs attributed to them. As regards the system of recruiting by garden-sirdars, he might for himself say, as the hon'ble member on the left (Moulvie Abdool Luteef) had said, that he believed

that the system, duly regulated and properly worked, was an excellent system. We were far from anxious to check it; but if the Select Committee to whom the Bill would be referred (if the Council should think fit to refer the Bill to a Committee) should find that the provisions of the Bill regarding this branch of the subject would unduly check emigation by means of garden-sirdars, he should be very glad to accept the improvement and amend that part of the Bill which they might suggest. The only changes in regard to the system of recruiting and transit by garden-sirdars which he was conscious of promoting, were, first, that the recruiter should be licensed by the Magistrate who had the best means of knowing his character and qualifications, that was, the Magistrate of the district of which from his residence he was a native, and in which he would recruit; and secondly, that we should have the means of meeting a difficulty—an extremely practical difficulty—which had been found, viz. that the coolies recruited by garden-sirdars were now by law allowed to proceed in steamers along with the contractors' coolies, and yet were not subject to the same regulations as the other coolies. The consequence was that the main body of the coolies were under supervision and control, and they might, to a certain extent, be ascertained to be free from infectious diseases; while on the other hand we had no power and authority over the garden-sirdars' coolies. Disease might be, and had been, introduced by these coolies. That was one most practical evil which the Bill sought to remedy. He hoped that the Bill, as it eventually emerged from the Council, would not contain any over-burdensome provision such as had been alluded to with regard to powers-of-attorney and other matters which could be avoided. He hoped that the provisions would be retained which enabled the Magistrate of the district simply to ascertain that the man was known in his village as a respectable man and was not a fraudulent touter, and on its being ascertained that the man was a respectable man, he would receive the Magistrate's license and would be free to recruit coolies to be conveyed to Assam under conditions most favorable to the coolies and most favorable to the planters.

Well, then, the hon'ble member opposite (Mr. Robinson) said, that if the provisions of the Bill were enforced, steamers would not be found to convey coolies to Assam. His Honor understood him to say that there were parties besides the coolies whose interests should be consulted—the interests of owners, passengers, and other parties. But His Honor thought he might say that as regards the upward voyage to Assam, coolies were in fact the main object of the running of these steamers. He believed that very heavy cargo was not carried upwards in these steamers. He believed that ordinary passengers were not the most important part of the cargo. He believed that the steamers and the two and three-storied flats which we saw upon these rivers were in fact emigrant ships designed to carry coolies. He believed that the coolies carried on the upward voyage were generally the principal source of profit to these steamers; and it was fair and proper and necessary that the owners of the steamers should look to the safety and security of the coolies as the first object. He had told the Council that under the present system the safety of the coolies was

not ensured, that the mortality had been very great and excessive, and he thought that the Council would not consider that he was in wrong in asking them to assist him in making rules tending to do what could be done to check mortality on the upward voyage.

Another point mentioned was the increase of fees. He admitted that it was proposed to increase the fees, and he would say that it was fair and necessary to do so. Although he admitted that emigration was a thing to be encouraged, he would at the same time say that emigration to Assam was connected with private commercial speculation. Tea planters, although they were pioneers of civilization and developers of the resources of the country, did not act from purely benevolent and humanitarian motives alone. They also looked to commercial considerations and profit, and the present law had ruled that the expenses connected with the system should be borne by those for whose private advantage the system had been inaugurated and conducted. It had been found that the fees were such that the labor transport fund had been insolvent, and a burden had thus been thrown upon the Government which it was never intended that Government should bear. It was but fair that the cost should be paid by the parties interested in the matter, and to effect this it was necessary that the fees should be increased.

He would refer again to that very important subject of time-expired laborers. He was quite ready to say that if the Committee and the gentlemen interested in the subject, upon consideration, found that on the whole it was most advisable for all parties that time-expired laborers should be absolutely freed from any special provisions of the law whatever, he believed the Government would not be unwilling to give fair consideration to that proposal. For himself, he could only say that if insuperable difficulties should not be found, he should not be altogether unwilling to accept a proposal of that kind. But the gentlemen making a proposal of that kind must remember that they must take the good and the bad together. They must remember that if the time-expired laborers were freed from the provisions of the law on one side, they must also be freed on the other; that if contracts with free laborers were not to be protected by special laws, employers would have no special remedies, and would have no means of enforcing a contract by any summary process. It was a question whether in these districts, where the Civil Courts were so sparsely situated and scarce, where justice was slow and not altogether sure, it would not be better for all parties that there should be some summary laws which would enable Magistrates to adjudicate cases between employers and laborers. If gentlemen interested in tea and the development of the country considered that it was better that these special laws on both sides should be swept away and the parties should be left to the control of the ordinary laws and the ordinary remedies of the law, then the Government, supposing no great difficulties occurred, possibly would not be unwilling to accept that view. But that was a view which he thought should be very carefully considered in Committee; and he had no doubt that the Committee, composed as it would be of representatives of various interests concerned,

as well as of members of the Government, would come to a fair and just and safe solution of this important subject.

Then, with regard to the necessity of giving plenty of time for the consideration of the Bill in Committee, he would say that the Government had not the slightest intention of hurrying this Bill through the Council. The hon'ble member in charge of the Bill had put on the paper a motion that the Committee should report in one month. With regard to that His Honor might say that the Bill had not been considered letter by letter by the Government; there might be room for misunderstanding it. Some provisions in the Bill which were not intended to have a hostile or injurious effect, had been considered by the hon'ble gentlemen and those interested in the cultivation of tea as having such an effect. In asking that the Committee should report within one month, he had not the least idea that the final report of the Committee should be presented within one month; but rather the proposal was made with this view, that the Committee having considered the more salient points of the Bill, that the members specially interested in the tea districts having met the members who represented the views of the Government, the more salient questions might be brought out, the more salient difficulties might be got over, and the more salient misunderstandings might be met. His view would be that within a moderate time a preliminary report should be arrived at by the Committee and the Bill might be republished in a revised shape. Misunderstanding having been explained and eliminated, then the Bill in its revised shape might be republished and submitted to the consideration of the public for a considerable period; and after the expiration of that period the Council might again consider the Bill more fully in detail, after having had before them varied suggestions which they might expect to receive from many quarters. Well, that was the view with which the Government placed this Bill before the Council, not in any view hostile to emigration, but in order to permit emigration in a safe and just manner. We were anxious that the matter should be temperately and adequately considered; that sufficient time should be given for its consideration; and we did not desire to show any bigotry in the matter either on one side or the other.

The Hon'ble Mr. Robinson said he was naturally very anxious that there should be no misapprehension as to his not being opposed to the fullest protection being afforded to the emigrants in transit. All he contended was that the form of protection afforded by the Bill was not the best that was possible; for he believed that the necessary protection would be better secured without inconvenience to any other parties concerned by more efficient medical attendance being provided on board steamers conveying emigrants. He spoke for himself and with great confidence for all gentlemen interested in the emigration of laborers to the tea districts, when he said that they were entirely willing to do anything that would contribute to the protection of the emigrants on their voyage. All they objected to was that the system of protection approved by Government was not the best, and that it placed great and unnecessary inconvenience on other interests.

His Honor the President said he was sure that the declaration made by the hon'ble member was extremely gratifying. But as regards the special point whether the most effectual remedy to infectious diseases was obtained by placing the emigrants in charge of efficient medical men on board ships, or by giving powers to the local authorities to stop steamers in transit, His Honor would say that it was a most difficult subject which was eminently fitted for the consideration of the Committee. He must at the same time say that he had had considerable opportunities of judging of the result when cholera once broke out on board a crowded cooly steamer, and his experience was opposed to the opinion expressed by the hon'ble member. When cholera broke out in those crowded steamers and flats, he believed that no amount of medical skill could eradicate it during the passage on board. As long as large masses of men were cooped up in a limited space, it was impossible to get rid of cholera when it broke out amongst them. But a most wonderful subsidence of cholera had in several instances occurred when the coolies were debarked. Thus what he might call natural measures for the prevention of the spread of cholera proved far more effectual than any amount of medical skill. But as he had said before, the matter was one for the consideration of the Committee, and he should be sorry indeed to give a positive opinion on a subject on which no man could be positive.

The Hon'ble Mr. Beaufort said that after what had fallen from His Honor the President, it was quite unnecessary that he should reply to the strictures passed upon the general spirit and intentions of the Bill before the Council; and the matters of detail to which hon'ble members had referred were not now before the Council for consideration. Almost everything which had fallen from the hon'ble gentlemen on his right might be referred to a misconception of the provisions, or of the effect of the Bill; but he would refer now to one or two points only.

In regard to the system of recruiting by garden-sirdars it had been objected that no planter would think of giving a power of attorney to any coolie to enter into a contract with the laborers. But he might observe that a power of attorney for the purposes of this Bill was not a general power of attorney, as his hon'ble friends seemed to suppose, but simply a power to do one thing, viz. to sign the contract, and thereby to bind the employer. The ordinary practice was, as he understood, to use printed forms of contract, which could be signed anywhere; and the employer need not be afraid to entrust to the person, whom he thought fit to be a garden-sirdar, the power of binding him to such a contract. The only object of requiring this power of attorney was to uphold the principle that had been enunciated in the earliest legislation on this subject, viz. that no emigrant should be allowed to leave the district in which he was recruited except under a specific contract with an employer. No doubt the practice had been for the garden-sirdar to bring the coolies down from recruiting districts to Calcutta, and to have the contracts executed here before the agents. But Mr. Beaufort believed that one of the chief objects of the garden-sirdar system was to obviate the necessity of bringing

the emigrants to Calcutta at all. It was intended that they should be taken at once to the port of embarkation, the place at which they were put on board steamers or other vessels for conveyance to the tea districts; and it appeared to him that the execution of the contract in the recruiting district would facilitate the attainment of this object.

Then the hon'ble member objected to the Magistrate being required to inquire into the facts stated in the garden-sirdar's certificate. He said that it would be utterly impossible for a Magistrate in a remote part of Chota Nagpore to inquire into facts existing in the tea districts. MR. BEAUFORT quite agreed with the hon'ble member, and there was no wish that the Magistrate should do so. Section 51 of the Bill referred to the Magistrate in the tea district, and not to the Magistrate in the remote recruiting district. When the garden-sirdar had received a certificate from his employer, he was to take it to the Magistrate, and the Magistrate was to countersign the certificate after inquiring into the facts. The Magistrate in the recruiting district would not make any such inquiry at all; but the Magistrate in the labor district must see that the garden-sirdar was a proper person to be employed in the recruiting of laborers, in the same way as with regard to contractors' recruiters the Magistrate of the district in which the recruiter resided should see that the person employed was a proper person to be employed in recruiting emigrants.

He might also repeat what had been already observed by His Honor the President, that the rules empowering a Magistrate to detain a steamer in transit were exactly the same as those contained in the present law. The power so vested in the Magistrate was, moreover, placed under certain restrictions, for he was required to make an immediate report of everything he had done, and certainly the Magistrate would not venture to interfere without some very strong reason for doing so. But there was nothing in the Bill which required the Magistrate to detain the steamer; if it were necessary, he might cause the emigrants to disembark, but he would allow the vessel to proceed on its voyage. It had been said that the proper course was to insist on providing sufficient medical officers on board the vessel; but the hon'ble member had probably overlooked a new section in the Bill which made it unlawful to carry a certain number of emigrants without a qualified medical officer. The presence of a skilled doctor would not, however, in all cases obviate the necessity of disembarking the emigrants.

Then, as to the hon'ble member's remarks on some sections of the Bill which provided vicarious punishment in certain cases, MR. BEAUFORT might observe that when the tea planter sent down a coolie to induce persons to leave their homes in remote districts for the purpose of becoming laborers in a tea district, he ought to be, and must be held responsible for the acts of the coolie in matters relating to the recruiting. That appeared to be nothing more than a bare equity required; and it would only impose on the planter the necessity of care in selecting his garden-sirdar.

The only other instances of vicarious punishment that he could remember now were that which made the liabilities of the planter a charge on his estate,

and that which made steamers or vessels employed in conveying emigrants liable for fines imposed on the officers commanding those vessels. It appeared to him that those provisions were just and equitable in principle, and very necessary to retain in the interests of emigrants. Where the Magistrate, not desiring to detain a vessel, found it necessary to impose a fine on the commanding officer, he would allow the vessel to proceed, and would recover the fine if it were not paid by subsequent attachment of the vessel.

Then, as to the question of time-expired laborers, he could only assure hon'ble members that the provisions of the Bill were simply what they professed to be. It was suggested that they might cover some object which did not appear; but he did not understand what was meant by this. The Bill provided that when the period of contract had expired, it should be wholly optional with the laborers to put themselves either under the rules of the law or to keep themselves entirely free. If the laborers entered into a contract for six months, they placed themselves under the protection of the law; but if they did not wish to place themselves under the protection of the law, they made no contract, or only entered into contracts for shorter periods. The hon'ble member believed that no contract was made for less than a year. Mr. Beaufort had had the advantage of the experience of a gentleman from the tea districts, who told him that the general period of the season was nine months. It might be that the Select Committee, with the information which would be placed before them, might consider that the period should be extended to nine months or a year; but whatever the period might be, the object was to give the laborer the option of remaining entirely free, or of placing himself under the protection of the law.

The motion was agreed to.

The Hon'ble Mr. Beaufort moved that the Bill be referred to a Select Committee consisting of the Hon'ble Messrs. Schalch, Bernard, Colvin, Robinson, Digumber Mitter, and the mover, with instructions to report in one month.

His Honor the President said he hoped the Council would not object to the motion, with the understanding that the time fixed for the submission of the Committee's report was merely nominal, and that the Bill could then be republished with the amendments made by the Committee.

The motion was agreed to.

The Council was adjourned to Saturday, the 15th instant.

By subsequent order of the President, the Council was further adjourned to Saturday, the 22nd instant.

Saturday, the 22nd March 1873.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble F. L. Beaufort,
The Hon'ble V. H. Schalch,
The Hon'ble Lord Ulick Browne,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble B. D. Colvin,
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor,
and
The Hon'ble Baboo Digumber Mitter.

HOWRAH LIGHTING-RATE.

The Hon'ble Mr. Beaufort moved for leave to bring in a Bill to provide the levy of a lighting-rate in Howrah. He said Howrah, as the Council no doubt were aware, was a municipality under Act III of 1864, and the place had been partially lighted with gas for rather more than two years. The municipality desired now to obtain from the Council an Act which would enable them to impose a lighting-rate. At present the cost of lighting the portion of Howrah that was lighted with gas was paid out of the general fund. The portion so lighted included the whole of Howrah proper, a large portion of Sulkea, and a small portion of Ramkistopore, extending over seven miles of roads and having 200 gas lamps. But the cost of laying down the pipes was very expensive, and the cost of maintaining the lamps was also very expensive, and the general municipal fund was quite unable to undertake the whole expenditure. It was unable, as it was, to meet the present cost of lighting 200 lamps, which at the contract rate of Rs. 100 for each lamp was Rs. 20,000 a year. The fund was not able to apportion Rs. 20,000 for lighting the streets with gas without taking away municipal money from other objects of great importance. The Commissioners therefore wanted to have the power of imposing a lighting-rate, and it was proposed to empower them to levy a rate of two per cent. on the real property of the place. Under Section 16 of Bengal Act III of 1864 municipal bodies were empowered to expend a portion of their funds in lighting streets, and Section 11 of Bengal Act VII of 1867 authorized Municipal Commissioners to make contracts for lighting streets. The sanction of the Government was given to the proposal of the Howrah Municipality to make a contract with the Oriental Gas Company in July 1867, and a contract was made which extended to twenty-one years, giving the Company a monopoly of lighting the place with gas, the minimum number of lamps being fixed at 200, and the cost of each lamp at Rs. 100 a year. The Oriental Gas Company established and maintained their works in Calcutta under a special Act of the Imperial Legis-

lature, No. V of 1857, and Act XI of 1867 empowered the local Government to extend that law. It was extended to Howrah by a Notification dated the 7th March 1867, and the contract with the Gas Company was then made; consequently the Council were asked now merely to legalize the imposition of a lighting-rate, in order to provide a sufficient fund to meet the cost of the gas.

In order to show that the municipal fund was unable to provide for the expenditure, and with the object of justifying the desire of the Commissioners to impose an additional rate, he would mention shortly the state of the general account. There was a house-rate, which produced about Rs. 1,12,000; there were certain tolls on ferries and the like, the proceeds of which amounted to about Rs. 7,000; there was a carriage and horse-tax, which, with the fees paid for registration of hackney carriages and hakaries, yielded about Rs. 5,100; and about Rs. 1,300 was received from licenses of various kinds. Therefore the whole income of the municipality amounted to about Rs. 1,25,400; and deducting therefrom Rs. 4,400 as the cost of collection, the net income of the municipality would be Rs. 1,21,000. Now, the municipality was bound to keep up the police force at an annual cost of Rs. 31,873; and its establishments cost Rs. 16,000; for the maintenance and repair of 21 miles of roads the estimated expenditure was Rs. 40,000, but not less than Rs. 30,000 could fairly be assigned for that purpose; the charge for conservancy was Rs. 29,000; and Rs. 7,000 for watering roads.

The total annual expenditure therefore, which the Commissioners were bound to maintain on these objects of primary importance, was Rs. 1,13,873, and deducting that amount from the annual income of Rs. 1,21,000, there remained a balance of only Rs. 7,127. But the municipality were under a contract to pay Rs. 20,000 annually to the Oriental Gas Company for the gas now daily consumed, and there was also a project for draining the whole town of Howrah, for which the municipality were now negotiating a loan, the liability arising from which would, during the first year, amount to Rs. 19,000. Having Rs. 7,100 in hand, they were required to meet a charge of Rs. 20,000 for lighting by gas and Rs. 19,000 towards drainage, without including any provision for extending the gas to any other part of the municipality. The estimate made of the return of the proposed lighting-rate at two per cent. on that portion of the place already lighted with gas was only Rs. 16,000, so that it would not pay the actual amount which the municipality were under contract to pay year by year to the Oriental Gas Company. It would be seen therefore that the request made by the Commissioners for power to impose the rate was not unreasonable, and it would also be seen that the proposal did not involve an unfair burthen on the rate-payers, for the present incidence of municipal taxation in Howrah was not high. According to the census lately taken the population of Howrah was 97,784, and with a total taxation of Rs. 1,25,400 the incidence was only Rs. 1-4-6 per head. The population in Calcutta were now paying more than Rs. 5 per head.

The provisions of the Bill which he now asked for leave to introduce, were exactly the same as those which were now in force in Calcutta: the sections of

the Bill were almost exactly copied from the Calcutta Acts, and it was proposed in Howrah, as in Calcutta, to impose a lighting-rate, not on the owners, but on the occupiers of houses, buildings, and lands, the only exception being that where the annual value of the property assessed to the rate was less than Rs. 100 a year, or where the house was let in flats or portions, the rate was made recoverable from the owner instead of the occupiers. In these cases it would be exceedingly difficult to collect the rate from these small occupiers or lodgers, and it was therefore provided that the rate should be recoverable in the first instance from the owner, and that he should recover a fair proportion from each lodger in the manner provided for the recovery of rents. It was proposed also to enact that the rate should not be imposed upon any portion of the town which had not the benefit of the gas; and for that purpose the Municipal Commissioners would be empowered to divide the whole place into districts.

Those were the objects of the Bill and the purport of it, and he did not think he need enter at any length on the advantages to be gained by lighting a place with gas. It had been found that the use of gas had had a material effect in the suppression of nocturnal offences; and in a place lighted partly with gas and partly with oil, the desire of those who had only the semi-obscurity of oil to participate in the benefit of gas was only natural.

THE HON'BLE RAJAH JOTENDRO MOHUN TAGORE said, in the Statement of Objects and Reasons accompanying this Bill, he saw that the proceeds of the whole taxation in the Howrah Municipality were expended for the purposes of drainage, roads, and conservancy, and yet a portion of the town was now lighted with gas. The question therefore arose whether, if proper oil lamps were substituted for gas lamps, the present income of the municipality would not be sufficient to light a wider area than at present. Besides, it was not known whether the people were really willing and able to bear an additional tax of two per cent. (which was as much as Calcutta paid) for a partial lighting of the town with gas, or whether they would not prefer a more general lighting of the place with oil instead of gas, and, if necessary, pay a smaller rate than now proposed. It must be remembered that the Municipal Commissioners of Howrah were not elected by the people, and he did not know how far they represented the feelings of the people. The simple expression of a wish on the part of the Commissioners, he submitted, would not justify the Legislature in imposing an additional lighting-rate upon the people. He therefore thought that sufficient opportunity should be allowed to the tax-payers to express their views before permission was given to introduce this Bill; or if the Council thought proper to give such permission, the Bill should at all events be published for a sufficient time in the Gazette before it was passed into law, so that the people of Howrah might have the opportunity of submitting any representations they should think fit.

HIS HONOR THE PRESIDENT said the Government in no degree took the initiative in regard to this Bill. The application to the Government to bring in the Bill came entirely from the municipality of Howrah. As things stood, the Government had no means of taking a *plebiscite* of the people. They looked on

the Commissioners as representing the municipality, and, as far as might be, the people of Howrah These Commissioners representing the municipality applied to the Government for legislation on a plan of this kind. He thought it was evident that the law under which Howrah and other towns were governed provided only for the ordinary repairs of roads and conservancy, and for lighting by the ordinary native method. But when we came to introduce a regular supply of gas and water on the analogy of advanced towns in other parts of the world, special rates for such purposes were required. The proposal for imposing this rate commended itself to him, because the area of the municipality was large; it included the town of Howrah and a considerable rural and village area outside the town proper. It seemed to him eminently fair and just that a great modern advantage of this kind should be paid for by those who directly and immediately benefited by that modern improvement: the proposal seemed fair and reasonable that only those portions of the town should be specially taxed to which the advantage of lighting by gas should be given. These were the circumstances under which the Government brought in the Bill. He quite agreed with the hon'ble member that if the Council permitted the Bill to be brought in, it was right and proper that it should be published, in order that all persons in Howrah who were interested in the matter should have the opportunity of expressing their minds, which His Honor had no doubt they would readily do.

The motion was agreed to, and the Bill ordered to be published in the Gazette.

AMENDMENT OF THE ABKAREE LAWS.

THE HON'BLE MR. BEAUFORT presented the report of the Select Committee on the Bills to amend Act XI of 1849, Act XXI of 1856, and Act XXIII of 1860. He said two Bills were referred by the Council to the Committee, one Bill being a short one, which was introduced first, authorizing the Board of Revenue to regulate the fees for licenses. The Committee having considered that Bill, were of opinion that the Board of Revenue ought to have the power of regulating the fees to be charged for licenses in any manner which might appear to it most efficacious in restraining the immoderate use of spirits, and therefore most beneficial to the public, and the Committee recommended that that Bill should be passed. With regard to the other Bill, which involved several important amendments and alterations in the existing excise laws, the Committee thought that the opportunity should be taken for revising the whole system of excise; they recognized the benefit of the amendments which the Bill proposed to introduce, but they considered that other amendments of equal importance ought to be made, and it appeared to them expedient that all such amendments should be made at one time. Several hon'ble members of the Select Committee had taken great interest in the excise question, and desired to propose alterations of the law on matters which they considered important. The Committee therefore recommended that the first Bill should be taken into consideration and passed, and that the further consideration of the

second Bill should be postponed for the purpose of giving time to the Committee to suggest further amendments in the several laws relating to excise.

His Honor the President said he might mention that probably the Government would ask the Council to consider the first Bill to amend Section 9 of Act XI of 1849, and Section 27 of Act XXI of 1856, in the form recommended by the Committee, and with regard to the other Bill to amend Acts XI of 1849, XXI of 1856, and XXIII of 1860, he would suggest that action be deferred for six weeks, and that in the meantime the Bill be published in the Gazette.

MOFUSSIL MUNICIPALITIES.

The Hon'ble Mr. Beaufort presented the further report of the Select Committee on the Bill to amend the District Municipal Improvement Act and the District Towns' Act. He said the Council would remember that on the first of this month he presented the report of the Select Committee on this Bill, but that a communication was at the same time received from the Suburban Municipal Commissioners proposing to introduce into the Bill provisions for the compulsory registration of births and deaths, and that that communication had been referred to the Committee for report. The report thus called for he now presented. The Committee were of opinion that it was inexpedient to introduce these provisions into the Bill now before the Council. They deemed it best to advise the introduction of a separate and general Bill providing for such registration, and empowering the Government to apply the law to any areas which might be selected for that purpose. The Committee were not opposed to the registration of births and deaths by municipal bodies; but it seemed to them that it might be expedient to organize such registers in places which were not municipalities. They thought also that the cost of making such registers ought not to be thrown on the smaller municipalities constituted under Act VI of 1868. The course which the Select Committee recommended therefore to the Council was to consider the Bill now before it in the shape in which it had been reported, and to consider the question of the registration of births and deaths in a separate measure; and with that view the Committee had drafted a separate Bill, which had been presented to hon'ble members with the report.

The Hon'ble Mr. Beaufort moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Committee.

The motion was agreed to.

The Hon'ble Lord Ulick Browne said he proposed a short amendment in the shape of the addition of a few words to Section 1, namely—"The Lieutenant-Governor may at any time withdraw such direction for the election of Municipal Commissioners." Having been absent from Calcutta on duty during the previous deliberations of the Council on this Bill, he begged to be allowed to make a few observations on the body of the section in support of the amend-

ment which he proposed. The section enabled the Lieutenant-Governor to direct that the elective principle should be applied to municipalities, and provided that if applied at all, then not less than two-thirds of the Commissioners should be elected. It also provided that on such elections every person should be entitled to vote who had paid the rate upon houses, buildings, and lands that had become payable by him during the preceding year. Practically, the effect of the section, it seemed to him, might possibly be to transfer from a selected body of gentlemen all real administrative power under the Municipal Acts to a large body of really irresponsible persons, in whom it would scarcely be reasonable to expect that the exercise of large powers would be accompanied by a corresponding sense of duty. As the section originally stood, it enabled the Lieutenant-Governor to introduce the elective principle, but it did not provide that not less than two-thirds of the Commissioners should be elected, if the principle of election were applied at all. Moreover, it did not make it compulsory that, if the principle of election were introduced, every person who paid the rate should be entitled to vote. This sweeping change had been introduced by the Select Committee, and the reasons stated for it were that in order to give the elective principle a fair chance of success, they thought it necessary to provide that a majority of two-thirds of the Commissioners should be elected. He confessed that he did not concur in that opinion. He had great doubts whether it might not have an opposite effect. He doubted whether, when the elected Municipal Commissioners saw that they being the majority would have all the real power in their own hands, they might not be tempted to exercise that power in a manner detrimental to the interests of the municipality. Considering that the elective principle was entirely new to the country; considering that in the opinion of almost all native gentlemen whom he had known to express an opinion on the point, including the opinion of one of the native members on the Committee, no native gentlemen of position and character would ever consent to what was called in elections in England to "stand" and to canvass for votes; considering that when the local officers were consulted only one single officer had declared that in his opinion only one single municipality was fitted for the introduction of that principle; and considering that in the letter from the Viceroy, which was the foundation of the present Bill, His Excellency appeared to contemplate the *gradual* introduction of a system whereby the people should come to be represented in municipalities, LORD ULICK BROWNE thought that, considering all these things, it would have been better if the section had been allowed to remain as it originally stood. The powers which were indirectly vested in the rate-payers by the section were very large. It would be remembered that in the Municipal Act III of 1864, although it provided that a rate should be levied for the maintenance and repair of roads for conservancy and the like, there was no section under which the Commissioners were compelled to apply any specific sum to conservancy, or to keep the roads in proper order. They could do as they liked. And though there was a section under which the Chairman could exercise all the powers of the Commissioners, there was also the exception that

he could not exercise those powers in regard to any matter expressly reserved for the determination of the Commissioners at a meeting. Now, amongst the things so reserved was the settling of the rate on houses, buildings, and lands; therefore it would be in the power of the majority of the Commissioners, if they thought fit to do so, to decide that instead of the 6 or 7 per cent. rate usually declared in municipalities, no rate at all, or perhaps a rate of four annas to provide for the maintenance of chowkidars at night, should be declared. He thought that if the mass of the rate-payers could be made thoroughly to understand the powers conferred on them by this section, they would resolve to elect no Commissioners who would not agree to reduce taxation in the manner he had suggested as possible. If they took such a course, the remedy provided would be quite inadequate to meet the difficulty. It was true that the Lieutenant-Governor could remove any Municipal Commissioner; but when once the rate was declared, no second rate could be declared under Act III of 1864; and as regards that year at least there would be absolutely no remedy, so the roads would remain without repair, and the drains would not be cleansed. But it had occurred to him that a still greater evil might possibly follow under the section as it stood. He saw no provision under which, when the Lieutenant-Governor had introduced the elective principle, he had the power to withdraw it in case it should prove to be a failure. If that was so, in places where the rate-payers were determined, they might go on electing a series of Commissioners who would vote for no rate at all. He thought it was advisable to provide for these contingencies in the Bill before the Council; and he therefore begged to propose the amendment.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE said, if he understood the hon'ble member rightly, it seemed to him that the whole of the hon'ble member's argument tended more towards no election than any thing else. But he thought that if the Commissioners were to be elected at all, they should certainly have some power, otherwise the principle of election would be carried out merely in name and not in effect. If Commissioners were elected, opportunity should be given to them to prove themselves useful: otherwise it would not be worth the while of any independent gentlemen to accept the office of Commissioner. Since the Government had accepted the principle of election, he took the liberty to observe it was useless arguing the question any further, and it would be but bare justice to allow that principle, wherever introduced, a fair trial, by giving the elected Commissioners at least the power which, under the existing Acts, by a majority of number only, they would be able to exercise. As to the abuse of such power, as apprehended by the hon'ble member, RAJAH JOTEENDRO MOHUN TAGORE had no objection to placing a remedy in the hands of the Lieutenant-Governor.

THE HON'BLE MR. BERNARD said he fully agreed with the hon'ble member who had just spoken, that, if the elective principle was tried at all, the candidates who were elected must have some real power given to them, and they could not have much power if only two or three Commissioners were elected out of about twenty-five. With regard to what had been said by the hon'ble

mover of the amendment, that no respectable person would ever be a candidate for election, he believed that the experience of other countries did not warrant such an apprehension. In the only Indian town where MR. BERNARD had seen elections at work, native gentlemen of rank and position did stand for election. In that town the father of the Rajah and others of his relations were candidates for election to the office of Municipal Commissioner, and were elected by the votes of men of all ranks. MR. BERNARD rather thought it was to be apprehended that elected members would at the outset be all men of the upper ranks of society, and he did not know if that was exactly what was wanted. We wanted men of high position on committees, but we wanted also men of intelligence from the humbler ranks of society. The chief objects for which taxation was imposed in municipalities were the repairs of roads, conservancy, and the like. He did not fear that elected Commissioners would be less ready to impose necessary taxation than nominated Commissioners. In places like Calcutta and Howrah, where the Commissioners might be said in some sense to represent the people, and where they had very much power, taxation had run high. In Bombay and other large towns, where the views of non-official Europeans and Natives exercised great influence over municipal affairs, taxation was also high. But in smaller towns, such as Moorshedabad, where the Commissioners had perhaps less power, where a great deal of money was wanted, the incidence of taxation was very low,—only 5, 7, and 8 annas a head. In Howrah already it was nearly Re. 1-8 per head, and we had the Commissioners of that place coming up for a further increase of taxation.

A scrutiny of the list of Bengal municipal towns in the recently published taxation reports should show that in places where the people had the power in their own hands municipal taxation was high, and in places where the municipal body was chiefly composed of officials, taxation remained light. When the hon'ble mover of the amendment said he thought that the section did not provide any remedy if the elected Commissioners refused to levy sufficient funds, MR. BERNARD would remind the Council of what His Honor the President said last year, that it would be much better if the people did a little themselves than had much done for them by the Government. MR. BERNARD rather thought that elected Commissioners would do too much than too little.

MR. BERNARD would vote against the amendment moved by the hon'ble member, that there should be a power vested in the Government to enable it, if it thought fit, to withdraw the principle of election from any municipality to which it might be extended. We had not yet tried the principle of election: it remained to be tried; and it would not seem advisable that elective Commissioners should begin their career with the threat hanging over them that if they opposed the Government or its representatives, their town would be disfranchised.

HIS HONOR THE PRESIDENT said, as far as the arguments of the hon'ble member who had brought forward the amendment went, His Honor entirely dissented from him and agreed with the hon'ble members who had subsequently

spoken. He thought we were greatly indebted to the Select Committee for the great improvements which they had made in the Bill as introduced. So far from thinking that the committee's amendments detracted from the value of the Bill as brought in by Government, he thought that those amendments much enhanced its value.

He should be very sorry to suppose that men of position and respectability would not be willing to stand for the representation of municipal bodies. He hoped men of position would be ready and willing to stand, and to accept that position; and he hoped with the hon'ble member who spoke last that the representation would not be confined to men of high position only, but that men of intelligence and trustworthiness from all classes would be elected. So far, then, His Honor's sympathies were entirely in opposition to the arguments used by the hon'ble mover of the amendment. But, on the other hand, it was perhaps necessary to remind the Council that the simple question before them was whether words should be added to the section empowering the Government to withdraw the rule of election from any municipality in case insuperable difficulties should be found in its practical application. He was inclined to think that the proposal of the hon'ble member was worthy of consideration, but for reasons entirely opposed to the reasons given by the hon'ble member. His Honor's impression was that Municipal Commissioners appointed under this Bill would not have power enough, and that the system might fail, not from the excessive, but from the too little, power of the Commissioners. He entirely agreed with the hon'ble member on the right (Rajah Joteendro Mohun Tagore), who said that you could not expect good men to accept the position without real and substantial power. He was not at all sanguine about the result of the elective principle as we now proposed to try it, because he had some fear that the Municipal Commissioners under this Bill would not exercise very substantial power. His attention had been drawn to that view by an active member of the Municipal Committee of the suburbs of Calcutta, and he had brought home to His Honor what he did not very distinctly perceive before,—the enormous power vested in the Chairman under the provisions of Act III of 1864. When we came to analyse that Act, it was found that there was a provision in the Act which provided that all the powers of the Commissioners might be exercised by the Chairman, except in regard to one or two matters with regard to which special provision was made. Under the provisions of this Bill, those powers might be exercised by the Chairman wholly without control from the Commissioners as a body. The power reserved to the Commissioners as a body was only the power of voting the rate. That no doubt, as the hon'ble member had pointed out, was a great power; but His Honor had some fear that if the power of the municipality, the power of the electors and of the elected Commissioners, was confined simply and solely to that one function of voting the rate, we could hardly expect that they would take a sufficient interest in municipal affairs. Not having any share in the executive functions of the municipality, they would look on those functions with some jealousy, and a dead-lock might result such as the hon'ble member had suggested. His Honor's

feeling was that to give a fair trial to the elective principle, it would be necessary that the Commissioners should not only have the power of voting, but of managing the rate, of dealing with the expenditure, of settling the objects of expenditure and the mode of the expenditure. He was at one time very much inclined to listen to the arguments of the native member of the Suburban Committee, who had been good enough to call upon him, and to think that we must amend the Bill in order to give the Commissioners a fair position. But the more he looked into the matter the more his impression was that Act III of 1864 was not an Act drawn for elective institutions, and if we began to amend it, in order to make it really good for such purposes, we should continue to do so until the Act became an entirely new Act, and we should find ourselves in the position of the Irishman who had an old gun with a new stock and a new lock and a new barrel. He did not see his way to effectually amending the Act without undertaking the drawing of a new Bill. Under present circumstances he had shrank from that duty, and had rather brought in a Bill limited to the suggestions thrown out by His Excellency the Viceroy. If he were right in thinking that we could not be very sanguine about the results of elective institutions under Act III of 1864, if possibly the trial of elective institutions under that Act might result in a dead-lock, then he thought it might be desirable that a discretion should be given to the Government to withdraw these elective institutions till such time as a more complete Bill might be passed and receive the necessary assent. Perhaps the learned Advocate-General would give the Council his opinion whether, as the Bill stood, it might be considered that the Government had or had not the power to withdraw elective institutions when once introduced. He confessed he doubted whether, as the Bill stood, it would be desirable that when once a Lieutenant-Governor introduced elective institutions, they must be maintained for all time without any discretion in any authority or any one to withdraw the elective arrangement if hereafter it should be found necessary to do so. The point, however, was not one on which he entertained a very strong opinion, and he had no doubt the Council would decide for the best.

THE ACTING ADVOCATE-GENERAL expressed his opinion that as the Bill was drawn it did not contain any power of withdrawing the elective principle when once it had been established.

HIS HONOR THE PRESIDENT continued—then the Advocate-General had so far cleared the question that it was now simply this, should or should not a power of withdrawal be vested in the Lieutenant-Governor? If the amendment was carried, the power would be so vested; if not, there would be no such power.

The motion was agreed to.

THE HON'BLE MR. BEAUFORT moved the insertion of the words "or of this Act" after the words "District Towns' Act" in line 7 of Section 6. He said this was a clerical mistake. The object of the section was to provide that municipal money should not be expended on schools, hospitals, dispensaries, and vaccination, unless the governing body of the municipality sanctioned such expenditure by the vote of the majority at a meeting specially convened.

But the sole authority for the expenditure of municipal money on schools was to be found in this Act, and therefore the section would have no effect in respect of schools unless the words "or of this Act" were inserted in it.

The motion was agreed to.

THE HON'BLE MR. BEAUFORT moved to omit Section 7 and substitute the following:—

"Notwithstanding anything contained in any of the Acts mentioned in the schedule hereto annexed, the Lieutenant-Governor may from time to time, by a notification in the *Calcutta Gazette*, fix the dates on which accounts and estimates shall be prepared and furnished by the Commissioners, the Municipal Commissioners, or the town committee, appointed under the provisions of the said Acts respectively; and the date of the first day of the year, which shall be used by them for making estimates, regulating taxes, registering carts and other wheeled vehicles without springs, and doing all such things as by law they are required to do."

The object of the section, he said, was to empower the Government to declare on what date the municipal year should commence. At present, as he had explained before, the Municipal Acts were not uniform in this respect. In Act XXVI of 1850 the date of the commencement of the year was apparently the 1st of May; in Act III of 1864 also it was the 1st of May; but in Act VI of 1867, which was the Act providing for the police budget, and which was in fact an amendment of Act III of 1864, the commencement of the year was the 1st January. All these Acts also contained different clauses providing for the submission of certain returns and statements on certain dates. This absence of uniformity was confusing, and there might also be reasons for altering the commencement of the municipal year. It was proposed therefore to give the Government the power of declaring in all municipalities what date should be the commencement of the year, and on what date returns, estimates, &c., should be furnished. But the section as it stood in the Bill did not refer to all municipalities, and the object of the amendment was to make it applicable to all the laws under which municipalities were constituted.

The motion was agreed to.

THE HON'BLE MR. BEAUFORT moved that the following section be introduced after Section 7:—

"All offences punishable under this Act and under the said District Municipal Improvement Act shall be inquired into and tried according to the provisions of the Code of Criminal Procedure."

He said he had some hesitation in proposing this amendment, because it appeared to him quite clear that a reference to the rules of the new Code of Criminal Procedure would show that a provision of this nature was wholly unnecessary. But in fact the wording of Sections 7 and 8 of the new Code did not materially differ from the wording of Section 21 of the old Code, and the purport of both was that offences against local and special laws should be inquired into and tried by the constituted Criminal Courts of the country. Nevertheless the High Court had held, in the case of Bissessur Chatterjee, which was an appeal from the order of a Municipal Commissioner sitting as a Magis-

trate in the Suburbs of Calcutta, that the provisions of the Code of Criminal Procedure could not be applied to the trial of an offence under Act III of 1864. It was not for him to say that the learned Judges of the High Court were wrong in their construction of the law; but if that ruling was correct, it would seem to follow that the provisions of the new Code of Criminal Procedure could not be applied to offences against the municipal laws unless a distinct declaration to that effect were added to the law. His object in proposing to introduce the section was to relieve the Courts from all doubt and uncertainty on this point.

His Honor the President said, as he had some special knowledge on this point, he should say a few words. It appeared to him that this amendment was not necessary and not desirable. He understood the hon'ble member to say that if the law was rightly construed this amendment was not needed, because it was his opinion that as the law stood it was to the effect suggested by the amendment, without there being any special provision of the kind. In 1871 the High Court on appeal differed from the opinion formed by a most competent authority, the Sessions Judge of the 24-Pergunnahs, who held that under the old Act such cases should be regulated by the Code of Criminal Procedure. Now, the special information His Honor could give was, that having been a member of the Select Committee of the Legislative Council of the Governor-General which dealt with the new Code of Criminal Procedure, and having had this special point before the Committee and the decision of the High Court, we varied the wording of the old Act with the view of obviating the possibility of any such doubt. Therefore, unless they of the other Council were in entire error in supposing that the wording of the new Code would have that effect, the amendment before the Council was undesirable, and would seem to throw a doubt on the law, and would make it necessary to introduce a similar provision in every law containing penal clauses. Unless, therefore, the necessity for this amendment was supported by very strong legal authority, he must submit that it was not necessary.

The Hon'ble Mr. Beaufort explained that as he had said before, he thought the section of the Code quite sufficient to meet the case. It was only with reference to the construction placed by the High Court on the old Act that he proposed the amendment. He would beg to withdraw the amendment.

The amendment was by leave withdrawn.

The Hon'ble Mr. Beaufort moved that the following Schedule be added to the Bill:—

Schedule.

Number of Act.	*Title.*
Act XXVI of 1850	To enable improvements to be made in towns.
Bengal Act III of 1864	The District Municipal Improvement Act.
Bengal Act VI of 1867	For the better regulation of the police in towns and municipalities in the territories under the control of the Lieutenant-Governor of Bengal.
Bengal Act VII of 1867	To amend Act III of 1864.
Bengal Act VI of 1868	The District Towns' Act.

The motion was agreed to.

His Honor the President observed that as a material alteration had been made in the Bill by the Council, the motion for its passing would stand over to the next meeting.

EMIGRATION TO THE LABOR DISTRICTS.

The Hon'ble Mr. Beaufort moved that the Advocate-General be added to the Select Committee on the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract labor and service. He said it was an entire mistake that the Advocate-General's name was not included in the motion for the appointment of the Committee. The Advocate-General had consented to serve on the Committee, and it was fully intended that his name should have been included.

The motion was agreed to.

REGISTRATION OF BIRTHS AND DEATHS.

The Hon'ble Mr. Beaufort moved for leave to bring in a Bill to regulate the registration of births and deaths. He said that in presenting the Report of the Select Committee on the Municipal Bill he had mentioned that the Select Committee with their Report had furnished the Council with the draft of a Bill for the registration of births and deaths which they thought would meet the object in view, and he now asked leave from the Council to introduce a separate Bill for that purpose which would give the Government the power of establishing such registers in any selected area in which it might seem expedient that all births and deaths occurring should be registered.

The draft of the Bill was in the hands of hon'ble members, but he did not propose to adopt it wholly. The Government would probably experience some difficulty in maintaining the elaborate machinery contemplated in the draft, and he proposed to provide one more simple and less expensive. The penal clauses for compulsory registration would be the same; but he would omit the second, third, and fourth sections, and would substitute provisions for the appointment of registrars of a more humble class. He begged the Council to understand that the Bill which he asked leave to introduce, although it would be very similar, would differ in some respects from the draft which was now in the hands of hon'ble members. A reference to that draft would explain the purport of his motion, but he was not to be bound strictly to its provisions.

His Honor the President said, he might say on the part of the Government that it was out of no disrespect to the Committee, who were good enough to draft a Bill, that we did not accept it wholly. So far from entertaining any feeling of disrespect to the Committee, the Government felt themselves under the greatest obligation to them for having drafted a Bill showing the principles of which they would approve. But the Select Committee had not before them the executive considerations which must influence the Government. While accepting thoroughly the principle of the Bill, it appeared to the Government that in the rural areas selected for the purpose of ascertaining the rates

of mortality, and possibly also of births, in some cases a machinery so elaborate would not be possible. Therefore our intention was, while maintaining the principle and many of the details of the Bill drafted by the Committee, to alter the form of the Bill so far as to admit a more summary and simple mode of registration in rural places in which a full registration system might not be possible.

The motion was agreed to.

The Council was adjourned to Saturday, the 29th instant.

Saturday, the 29th March 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
THE HON'BLE F. L. BEAUFORT.
THE HON'BLE V. H. SCHALCH.
THE HON'BLE H. L. DAMPIER.
THE HON'BLE LORD ULICK BROWNE.
THE HON'BLE C. E. BERNARD.
THE HON'BLE MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR.
THE HON'BLE T. M. ROBINSON.
THE HON'BLE F. F. WYMAN.
THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR.
THE HON'BLE BABOO DIGUMBER MITTER.

THE HON'BLE MR. DAMPIER took the oath of allegiance, and the oath that he would faithfully fulfil the duties of his office.

HOWRAH LIGHTING-RATE.

THE HON'BLE MR. BEAUFORT said at the last meeting of the Council he had explained the object and intention of the Bill. With reference to the remarks which had on that occasion fallen from the hon'ble member on the right (Rajah Joteendro Mohun Tagore), he might state for the information of the Council that a communication had been addressed to the Magistrate of Howrah requesting him to give the widest publicity to the Bill in order that the inhabitants of Howrah might have an opportunity of placing before the Council any objections which they might entertain to the imposition of the lighting-rate or to the provisions of the Bill. Howrah was very near Calcutta, and no doubt the intelligent inhabitants read the daily newspapers and would have full information of the proposal to impose a lighting-rate. He would only observe farther that there was one ground for hastening the consideration of the Bill, viz. that the municipality wished to impose the rate from the commencement of the municipal year in Howrah, which was stated to be the 1st of April. Act III of 1864, under which the Municipality of Howrah

was constituted, fixed the 1st of May for the commencement of the municipal year; but it appeared that in Howrah the Municipal Commissioners commenced their year on the 1st of April, and therefore he had inserted in the Bill a clause declaring that the Act should take effect from that date. But full time would be given to the people of Howrah to come forward and submit their objections to the Bill. He would now move that the Bill be read in Council.

The motion was agreed to and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Schalch, Dampier, and Digumber Mitter, with instructions to report in three weeks.

REGISTRATION OF BIRTHS AND DEATHS.

THE HON'BLE MR. BEAUFORT moved that the Bill for regulating the registration of births and deaths be read in Council. He mentioned on the last occasion the object of this Bill, and referred to the draft of a Bill which had been submitted by the Select Committee on the Municipal Bill. But he stated at that time that he proposed not exactly to adopt that draft, but to bring forward another Bill. That Bill had now been prepared and circulated to the hon'ble members, and they had been able to compare the two. There was no great difference between the two Bills. It was proposed in the same way that registrars should be appointed to register either births or deaths or both, as might be determined. The Government was empowered to select areas in which the registration of births and deaths, or of births or deaths, would be compulsory. But the draft sent up by the Committee contemplated an elaborate machinery and the appointment of many registrars in order to carry out the provisions of the Bill. It was considered that such an elaborate machinery would be expensive and unnecessary, and therefore the Bill provided a much more simple means of effecting the object in view. It proposed that the Magistrate should be empowered to appoint so many registrars as he might deem necessary, and for that purpose to divide the selected area into districts, in each of which one or more registrars might be appointed. Within such areas the registration of births and deaths, or of one or the other only, would be compulsory under pain of light fines; but in order to obviate any unnecessary trouble, and to make the process as simple and easy as possible, it was provided that each chowkidar or village watchman should report, at certain periods to be fixed by the Magistrate, all births and deaths occurring within his beat, and that he should require the persons who were bound to give such information, that was to say, the persons bound to register births and deaths, to give him the requisite particulars in writing. The delivery of such a written memorandum to the chowkidar would obviate the necessity of personal attendance at the registrar's office; and the chowkidar who neglected to bring such a memorandum, or to report the particulars, would be liable to punishment. The whole process would be as simple as possible. Under this Bill, as in the draft prepared by the Committee, municipalities constituted under Act III of 1864 were authorized to adopt the provisions of the law and to register births and deaths if they thought fit to do so. But they were not required by the Bill to undertake this duty.

The motion was agreed to and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Dampier and Bernard, the Hon'ble Rajah Joteendro Mohun Tagore, the Hon'ble Baboo Digumber Mitter, and the Hon'ble Mr. Colvin, with instructions to report in a fortnight.

MOFUSSIL MUNICIPALITIES.

THE HON'BLE MR. BEAUFORT moved that the Bill to amend the District Municipal Improvement Act and the District Towns' Act be passed.

THE HON'BLE MR. BERNARD said, that before the Council proceeded to pass this Bill he would ask leave to move an amendment in terms of the notice which he had circulated and which was as follows:—

"8. For Section 20 of the said District Municipal Improvement Act, the following section shall be substituted:—

"20. The Chairman or Vice-Chairman shall, for the transaction of the business connected with, or for the purpose of making any order authorized by this Act, exercise all the powers vested by this Act in the Municipal Commissioners. Provided that it shall not be lawful for the Chairman or Vice-Chairman to act in opposition to, or in contravention of, any order of the Commissioners at a meeting, or to exercise any power which it is by this Act expressly declared shall be exercised only by the Commissioners at a meeting."

He must apologise to the Council for troubling them with an amendment at so late a stage, when the Bill stood in the List of Business to be passed. But the Council was aware of the circumstances under which the present short Bill was introduced. His Honor the President had explained that the Government could not hope to bring in any detailed Bill to extend the powers of municipal bodies, although the Government was ready, as suggested by His Excellency the Viceroy, to ask the Council to permit us to try the elective principle in municipalities, and to authorize the expenditure of municipal funds towards the support of hospitals, schools, and dispensaries. The Council and the Select Committee had recognized the principle that if we largely extended the powers of Municipal Commissioners, it would be necessary to extend also the duties and obligations lying upon them. And it might be necessary to provide otherwise for the performance of such duties in the very improbable event of Municipal Commissioners failing to do what the law expected them to do. But the present Bill did not provide for altering the procedure of Municipal Government. All it did was to permit the election of Municipal Commissioners. But it seemed that in this Council, and in the Select Committee, and outside this Council, much stress was laid as to the necessity for increasing the powers of elective Municipal Commissioners. It was urged that men of position and respectability would not take the trouble to stand for election if they had no real power vested in their hands. It was found that this object could not be gained without recasting the whole municipal law, and this the Government was not prepared to undertake at present. But an eminent and active member of the municipality at Alipore had pointed out a way in which it was possible to extend the powers of the Commissioners in one important particular without altering materially the procedure under the municipal law. At present Section 20 of the District Municipal

Improvement Act provided that the Chairman or Vice-Chairman should exercise all the powers of the Commissioners except those which by law were required to be exercised by the Commissioners at a meeting. That is to say, the Chairman or Vice-Chairman might individually do or undo all that the Commissioners as a body might do, with the single exception of fixing the rate of taxation and passing the yearly estimate of expenditure. It might come to this that the Municipal Commissioners could one day settle an estimate for a particular road and might decline to sanction a particular bridge; and the very next day, the Chairman or Vice-Chairman might cancel the Commissioners' orders and undo what the Commissioners had done. MR. BERNARD did not think that any Vice-Chairman had in so open and flagrant a way ever acted in opposition to the wishes of the Commissioners, but if he chose to do so, he would be borne out in his acts by the law, and could do so legally. One result of this state of things had been that the meetings of Municipal Commissioners had not been held so often as the law required, and the Commissioners did not take as much interest in the affairs of the municipality as they might otherwise do, and the whole administration of the municipality drifted very much into the hands of the Vice-Chairman. He would ask the Council to remedy this state of things by adopting in this Bill the provisions of the Calcutta Act, laying down that the Chairman or Vice-Chairman should not, when exercising the powers of the Commissioners, act in opposition to, or in contravention of, the views of the Commissioners as expressed by them at a meeting. This would not invalidate the acts of the Chairman or Vice-Chairman in matters regarding which the Commissioners had expressed no opinion. But it would confer this power, that if the Commissioners as a body disapproved of any act or course of proceeding taken by the Chairman or Vice-Chairman, they would be able to say, "a majority of us do not approve what you have done in this matter, and you must not do it again." This was not an unreasonable power to give to Municipal Commissioners, and he did not see that it could in any way injure the working of municipalities. If the amendment were adopted, the Chairman or Vice-Chairman would be very much more free to act than he would have been under the Bill passed by this Council in the last session. He did not see that there could be any objection to the adoption of the course proposed. It was thrown out on a former occasion that the Commissioners might refuse to grant any money at all, or they might pass an order that only such amount of rate should be levied as was necessary for the maintenance of police, which, under the law, they were bound to maintain. As far as the voting of money went, as the Act stood, the Commissioners had the power of fixing the rate of assessment to be levied, and they might, if they chose, decline to pass any rate except what was necessary for the maintenance of police. And if they exercised their judgment in declining to sanction a particular bridge or in stopping the watering of a particular street, MR. BERNARD thought they had a perfect right to do so, seeing that they would probably be acting *bonâ fide* in the interests of economy and of the townspeople they represented. But, as he submitted at the last meeting of the Council, he did

not think there was any risk that Municipal Commissioners would, directly they got a little power, set themselves straightway to curtail any reasonable expenditure. In his opinion all independent municipalities were generally very liberal bodies: he thought indeed that the danger was on the opposite direction, and they might be too liberal and even lavish in expenditure A table of municipal taxation was laid on the table of the other Council, in which the taxation in every municipality was shown separately, and the Acts under which they were governed. If the Council would compare towns of the same size and in other respects of the same calibre, governed under Act III of 1864, with others similarly circumstanced but subject to the Act of 1868, they would find that the rate of taxation was tolerably high in towns which were governed by Commissioners appointed under the former Act, while in the towns governed by the Magistrate under the latter Act, taxation was generally low. Take for instance the towns of Berhampore and Hooghly, which were towns having about the same population, and which in many other circumstances were very similar. Hooghly was a municipality constituted under Act III of 1864, and Berhampore was governed under Act VI of 1868, which was a Magistrate's Act. In Hooghly the ratio of taxation per head was 13¼ annas, and in Berhampore the ratio was only 7¼ annas Therefore in two towns similarly circumstanced we found that taxation was tolerably high where Municipal Commissioners were the governing body and very low where the Magistrate had the management of Municipal affairs; and the same would be found to be the case if a comparison was made between Dacca and Moorshedabad, which were towns of about the same size, both with a large population and otherwise similarly circumstanced. He might almost say that if Calcutta had during the last fifteen years been managed by Government officers, he did not think we should have had such a high rate of taxation. Perhaps we should have the water works; we most probably should not have had a system of drainage; we should certainly not have had two municipal markets. Indeed we might be pretty certain that if Calcutta had since 1856 been governed by Government officers, the citizens would have had very much fewer advantages and conveniences, and very much lighter taxation, than they now had. So far therefore as we might judge from the experience of Calcutta, we might reasonably suppose that Municipal Commissioners, if they had the power, would expend money in many useful ways. He would say, if the Council would allow him, that he was for some years Chairman of the Municipality of a town with a population of about 80,000 or 90,000 souls: amongst the Municipal Commissioners there were some five or six nominated by Government, and 18 or 20 non-official members. So far as he could remember, the only case in which he was thoroughly outvoted was on a question of expenditure. He opposed the proposed outlay, and the majority of the nominated Commissioners opposed it; but the elected Commissioners carried it entirely against him. Of course he and the other official members had to consult the Commissioners before they introduced any large or expensive scheme; and they often had to modify large and small proposals after dis-

cussion with the Commissioners at a meeting. Such discussions and modifications were probably to the advantage of the town and its people. He should be sorry to think that they were not. He thought the same would be the case in Bengal. If the Municipal Commissioners had real power vested in them, they would speak out their minds, and in the long run their influence in the management of municipalities would prove of great good. It might be argued that if the proposed amendment was put on the ground of giving more power to elected Municipal Commissioners, its operation ought to apply only to municipalities governed under the elective principle. But in Bengal Municipal Commissioners in most districts were nominated; and generally very good men were nominated. Until we got nominated Municipal Commissioners who had some power and took an interest in municipal affairs, we could not expect to get good and active elected Commissioners. Therefore he asked the Council to accept the amendment which he proposed both as to municipalities in which the non-official Commissioners were nominated, and where the elective principle should be introduced. He did not propose to extend the amendment to municipalities constituted under the District Towns' Act, because under that law the members of the committee had very little power, and it would be practically almost impossible to apply the amendment to municipalities of that description.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE said he had all along great misgivings that notwithstanding the very laudable desire of the Government to give real elective self-government to municipalities, the existing provisions of the law would in a great measure frustrate the object in view. He himself at one time intended to submit to the Council an amendment somewhat similar to the one now proposed, but the preamble of the Bill, as he read it, made him hesitate to adopt that course. He was glad, however, that the hon'ble member opposite (Mr. Bernard) had moved the amendment, for RAJAH JOTEENDRO MOHUN TAGORE was of opinion that some power ought to be given to the Commissioners in order to give the scheme of municipal self-government a fair trial. He hoped that the amendment proposed would be accepted by the Council, and that no technical objection would be allowed to stand in the way of converting the Bill to a certain extent into what it really was intended for, namely, to give the people a system of real elective self-government. For his own part it was scarcely necessary to add that he gave his entire support to the amendment.

THE HON'BLE LORD ULICK BROWNE said, in rising to oppose the amendment it was satisfactory to him to think that he could reasonably expect to receive the support of the President. On the last occasion on which this Bill was discussed, His Honor stated that he had received a representation from a Municipal Commissioner of the Suburbs urging that the powers of the Chairman should be restricted before this Bill was passed. But the view taken by the head of the Government was that it was not expedient at present to pass an entirely new Bill, and that as there were already in the Bill before the Council several new provisions which had the effect of transforming the Municipal Acts considerably, it was like the Irishman who said he did not wish to have a new

gun, but a gun with a new lock, a new stock, and a new barrel. LORD ULICK BROWNE thought that in the stage in which the Bill was at the last meeting, it had a new stock, a new lock, and what seemed to him a very dangerous hair-trigger ready to explode the municipal gun at any moment. He had then proposed, and the Council accepted, a very moderate trigger-guard. But the hon'ble member, mover of the amendment, now proposed to add the barrel which His Honor the President was unwilling to add to the Bill. Section 20 of Act III of 1864 was passed with Section 28 of Act VI of 1863 (the Calcutta Municipal Act) before the Council. The wording of the former section was the same, with the exception of the particular words which the hon'ble mover of the amendment now proposed to add to it. The words were—"to act in opposition to, or in contravention of, any order of the Commissioners at a meeting." It was evident, when the Municipal Act of 1864 was passed, that the Council deliberately excluded the words which were now proposed to be included in the section. No doubt it was in consideration of the more advanced state of the Calcutta Municipality that such a provision was made in one Act and not in the other. The District Municipal Act was passed in 1864. During the last nine years he believed—indeed the hon'ble mover of the amendment had admitted—that no complaint had been received that any Chairman had unduly exercised the powers conferred on him by Section 20 as it stood. In addition to this, under the present Bill, it must be remembered that the position of the Chairman of the Municipal Commissioners would be very different from what it had been. Hitherto the Commissioners had been carefully selected. But if the elective principle were applied to municipalities, under the very large new powers conferred on the Commissioners by the Bill, it seemed to him very much more necessary that the Chairman should retain the powers which he had hitherto exercised, or rather be in a position to exercise them, if necessary. Now as the Bill stood, if the Municipal Commissioners chose, not merely to say that they would not levy a rate, or that they would levy only a very trifling rate, but that they would not expend the rate already collected and would return it to the rate-payers; or if, in a place like Kishnagur, which was said to be the only municipality fitted for elective representation, the Commissioners should say that the money should be devoted to setting apart a grove for monkeys or the erection of a temple to the monkey-god, they could do so. All this would of course be quite illegal; but if the amendment before the Council was carried, it would be impossible for the Chairman to do any thing against the order of the Commissioners, as he would commit another illegality if he did not accept the vote of the majority; that was to say, if, after the Commissioners had passed such a vote, he spent the money on any purpose connected with the municipality, such as on roads, drains, &c., he would be acting "in opposition to, or in contravention of, an order passed by the Commissioners at a meeting." The hon'ble member had laid stress on the fact of the expenditure being larger in municipalities under the District Municipal Improvement Act than in towns under the District Towns' Act; but LORD ULICK BROWNE thought there were

other reasons accounting for that fact, which need not be looked for quite so far off as the hon'ble member had gone. Towns under the Municipal Act were more wealthy and important than towns under the other Act, so it was no wonder that the expenditure was greater in municipalities under the Act of 1864 than in towns under the Act of 1868. There were, it might be said, three grades of towns: those under the District Municipal Improvement Act, those under the District Towns' Act, and those under the Chowkidaree Act, XX of 1856. Those towns that were not of sufficient importance to be classed under the District Municipal Improvement Act, were placed under the District Towns' Act, and those that were not sufficiently rich and important to come under the Towns' Act, remained under the Chowkidaree Act. He therefore thought that the argument adduced by the hon'ble member that towns governed by Municipal Commissioners were more highly taxed than towns under what he called a Magistrate's Act, would scarcely apply as showing that Municipal Commissioners under this Bill were more likely to raise than to reduce taxation. LORD ULICK BROWNE thought that considering that the section as it stood had not given rise to any complaint, and considering the very large powers which the Bill as it stood would confer on the Commissioners, it was advisable that the Chairman should have the opportunity of remedying any illegality or injury to the rate-payers, and he hoped that in this matter the Council would let well alone.

THE HON'BLE MR. WYMAN said it was generally understood that the object of the Bill was to introduce, gradually it might be, but still to introduce, the principle of self-government; and therefore he thought it was most advisable that the provisions of the Bill should be such as, whilst giving the power of self-government under a system of election to municipalities, those municipalities should feel also that with the system of election and with this self-government, they had a certain amount of discretion and power in administering their own affairs. If in a place like Calcutta, where public opinion was so strong, and where the arbitrary acts of the Chairman or Vice-Chairman would at once meet with condemnation or reprobation at the hands of the press and the public; if it was necessary in Calcutta that such a clause as that proposed should exist in the law, MR. WYMAN thought it was very necessary that this clause should be introduced in the mofussil, where no such public opinion existed. And then the power sought to be bestowed on persons who were really entitled to exercise it was simply that of saying that in things which concerned themselves they should have a voice collectively, and therefore a more powerful voice than that of the individual Chairman or Vice-Chairman who might happen to differ from them. It seemed most strange that it should be advanced that if the Chairman or Vice-Chairman, in the supposed interests of the municipality over which they presided, could do such and such things, either good or bad, the Commissioners as a body should not be able to correct or modify any single one of such Acts; that it should not be in the power of the Commissioners at a meeting to say—"We do not agree with what you have done; what you have done cannot be helped, but we desire that it should

not be done again." If you took away this power of objection and remonstrance and of prevention in the future, you reduced the Commissioners to a position which it would not be a matter of pride or satisfaction to independent gentlemen to hold. It might be that the inhabitants of some towns in the mofussil were at present not sufficiently advanced to take so liberal a view of things as the Chairman or Vice-Chairman would do, and it was very possible that the Chairman or Vice-Chairman might possess, on questions under discussion, an opinion of more value than that of the combined Municipal Commissioners; but this Bill was somewhat of an educational measure: it was designed to teach the people how to govern themselves; and unless you gave them some power they would have no interest in the affairs of the municipality. They might make mistakes; but if they did, it would be brought home to them, and in time by judicious management the Chairman and official members would be able to induce the people to do that which it was their interest to do. Assuming, therefore, that they would in time become sufficiently self-educated to manage their own affairs in the manner they should do, they would have a positive right to protect the interests of the persons they represented—the tax-payers. If you took away that power, they became less than the nominees of the Government. No men of independence and intelligence were likely to compete for election if they found that they were to have no power. They would not even have the power by resolution at a meeting to say to the Chairman "We do not approve of what has been done; we desire it should be done in some other way." What was the use of asking intelligent and respectable men to serve as Commissioners under conditions where they were really absolutely powerless? He did hope that the Council would adopt the amendment of the hon'ble member and give this measure of power to the Commissioners in the belief that they would not abuse the powers entrusted to them; that Municipal Commissioners knowing their own interests would support those interests and not fly in the face of reasonable reforms and expenditure; and that in introducing the elective principle we would give it a fair trial, and induce people to come forward under such a system who were men of sufficient intelligence and independence, and who would take a real interest in the affairs of their municipality.

THE HON'BLE MOULVIE ABDOOL LUTEEF said, that having had several years' experience of the working of the municipality in the suburbs, he begged leave to state, for the information of the Council, that although the District Municipal Improvement Act did confer powers on the individual Chairman or Vice-Chairman equal to those conferred on the Commissioners as a body, he was not aware of any instance in which the executive of the Suburban Municipality had exercised those powers against the wishes of the Commissioners as a body.

THE HON'BLE MR. DAMPIER said he understood the meaning of the hon'ble member who objected to the amendment to be that the words of the amendment were to be deliberately left out for the purpose of enabling the Chairman to fly in the face of the expressed opinion of the Commissioners, if that opinion was opposed to the opinion of the Chairman himself. He could not

understand how it was possible for any one to accept that view of the matter. If in such laws the Chairman and Vice-Chairman alone (as well as the Commissioners as a body) were vested with authority to do certain things, it was merely an expedient arising from the necessity of the case, because the Commissioners were not always to be found sitting and at hand to give every order at the moment it was required in order to carry on business. It was evident, he thought, that such powers were conferred on individuals for the sake of convenience and nothing else,—in order to enable them executively to carry out the policy adopted by the Commissioners as a body. He should therefore support the amendment.

His Honor the President said he thought it was not to be denied that the amendment proposed was not an amendment on one point only, but it was a very radical amendment. It certainly did change altogether the character of municipal institutions under the Bill which it was proposed by the amendment to alter. He was free to confess that it seemed to him that as the law stood municipalities under Act III of 1864 were very much a sham. It did seem to him that the law gave to the Chairman an enormous power of doing very much what he liked. We had been told by more than one hon'ble member that the Chairmen of municipalities had not arbitrarily exercised that power, but that the Chairmen felt themselves bound by moral restraint to carry out the wishes and intentions of the Municipal Commissioners If that were so, possibly there might not be any objection to making the law in accord with the fact. But His Honor must say, as he understood the matter, the law as it at present stood had deliberately given that power to the Chairman, and he was distinctly under the impression that when the independent Municipal Commissioners of the Suburbs of Calcutta wished to question the acts of the Chairman, or rather of the Vice-Chairman, they were met by the provisions of Section 20 of Act III of 1864 : they were told that it was no business of theirs; that the Chairman and Vice-Chairman had the power, and had exercised that power and that the Commissioners had no power of interference. That being so, he thought, as he had said, that the amendment before the Council was undoubtedly a very radical amendment,—that it furnished the new barrel to this municipal gun. Then as to the question whether this amendment should be adopted, His Honor on a former occasion expressed freely his feeling on the subject. He told the Council that this amendment had been suggested to him by an active member of the suburban municipality. He told the Council, what he now again said, that he thought the proposal worthy of consideration ; but he also told the Council that he shrunk from proposing on the part of Government so radical a change in the law; for this reason, that he believed the law as it stood to be drawn not as a Bill permitting independent action on the part of the Commissioners, but one of a totally opposite character, and his fear was that to attempt to put a new barrel in an old stock might lead to confusion. At one time the proposal appeared to him to be so wide that it might involve such alterations as would make a new Act altogether, and still he shrunk from undertaking responsibility for the success of a patched-up measure. In declin-

ing that task he was not acting on technical grounds. He would be the last person to make a technical objection. But his feeling being such as he had explained, he should tell the Council that the proposal submitted by the hon'ble member on the left (Mr. Bernard) was not a proposal for which the Government as a body was responsible, but a proposal for which the hon'ble member was individually responsible. His Honor might say for himself that he was inclined to think that if the other parts of the Bill would work with the amendment, then the proposal was in itself a good one. His only doubt was whether the other parts of the Bill would fit with this proposal; whether it might not be found that if you gave too much independence of action under the Bill to Commissioners who were not now independent, you might sooner or later come to a dead lock. At the same time the amendment was of so concise and precise a character that it was not difficult to put it into words; and if the Council was pleased to accept it, His Honor should not oppose the power vested in him to prevent the Council from exercising their discretion in the matter.

One word in regard to an objection brought forward by the hon'ble member on the left (Lord Ulick Browne). He said that under this amendment it might be in the power of a municipality to vote a temple to a monkey-god, and the Chairman would have no power to prevent it, but would be bound to carry out the resolution of the Commissioners. In that view the hon'ble member was mistaken; for if hon'ble members would look to the wording of the amended clause, they would find that it prescribed that the Chairman should not do certain things, not that he should do any thing. All that was proposed was that the Chairman should not be allowed to do any thing in opposition to, or in contravention of, any order of the Commissioners; but the amendment in no way provided that he should be bound to do any thing whatever which the Commissioners might unlawfully require to be done.

The Hon'ble Mr. Beaufort said he thought it would be expedient to remember exactly how the law stood. As he understood the District Municipal Improvement Act, the powers reserved to the Commissioners at a meeting were that of regulating the amount of the rate to be levied on houses, buildings, and lands, and that of determining on what objects the municipal money should be expended. Those were the only special powers given to the Commissioners at a meeting. Then Section 20 provided that the Chairman or Vice-Chairman should exercise all the powers of the Commissioners except the powers reserved to be exercised by the Commissioners at a meeting; that was to say, they should act as the executive of the Commissioners and carry into effect their resolutions. The object of the amendment was to provide that in carrying out those resolutions the Chairman or Vice-Chairman should not act in opposition to, or in contravention of, any resolution which the Commissioners might have passed at a meeting. The law gave no further power than what he had stated, and the amendment went no further than to say that the excutive officer of the Commissioners should not do or omit any thing which the Commissioners at a meeting declared should not be done or should be done.

That appeared to him a most reasonable thing for the law to declare, and he should therefore support the amendment.

THE HON'BLE MR. SCHALCH said although he had had no experience of the working of municipalities out of Calcutta, but having had experience in the Calcutta Municipality, perhaps he ought to say a few words. As regards the municipalities constituted as in Calcutta, where the members were appointed by selection on the part of the Government, he would have no hesitation at all to extend to District Municipalities the same powers as were conferred by the provision of the section now in force in Calcutta and now proposed to be incorporated into the District Municipal Improvement Act; but he doubted the expediency of extending this provision to municipalities in which the Commissioners were elected, for at present we had no experience whatever of the class from which the Commissioners might be taken, and until we knew under what principles this power might be exercised we should be importing a very dangerous principle into the Act. It seemed, however, that by a recent alteration power was given to the Government to prohibit future elections in case the system of election did not work satisfactorily; and he thought that with that safeguard there would be no great danger in introducing the principle now proposed. It would certainly give the whole system of election a fair and full trial, and an opinion would be sooner formed as to whether that system was beneficial or not for the country. In that view he would support the amendment.

THE HON'BLE MR. ROBINSON said, it seemed to him that under the amendment, which simply consisted of the addition of a few words to Section 20 of Act III of 1864, it was feared by the hon'ble member opposite that there might be possible circumstances under which, to continue the simile he adopted, the municipal gun would not go off at all; but he did not think that there need be any apprehension of a danger of that kind. The amendment seemed to him to be simply a limitation of the powers of independent action of the Chairman and Vice-Chairman of a Municipality. Beyond that the section seemed to him to have no effect at all; and it simply amounted to this—If the Commissioners decided at a meeting that a certain thing should not be done, the Chairman and the Vice-Chairman should not have the power to do that certain thing in spite of that decision. Beyond that the section seemed to have no effect at all. It was a limitation of the possible power of independent action of the Chairman to which he (MR. ROBINSON) thought no objection could be taken, as the intention of all municipal legislation now was to give with the power of electing Commissioners to the payers of municipal taxes, greater powers to the Commissioners. He would therefore vote for the amendment.

THE HON'BLE MR. BERNARD said he did not think he need trouble the Council with much by way of reply, as most of the hon'ble members had supported the amendment. In regard to what had fallen from the hon'ble member on his right (Lord Ulick Browne), he thought that the hon'ble member's objections might be divided into three—First, that it was proposed by the present Bill that the Commissioners should be elected and have more power, and that as they had more power it was more than ever necessary to have a

bridle in their mouths, and that the Chairman should have that bridle in his hands. MR. BERNARD thought that very few would accept that argument; it would be taking away with one hand what we were giving with the other. It would be in effect to say to the new Commisioners—"We are giving you a stronger status and larger powers, and we hope you will exercise these powers fairly, but on the other hand we are afraid of what we are doing, and therefore we must keep all the old restrictions on your freedom of action." The hon'ble member on his right (Mr. Schalch) observed that we did not know who the elective Commissioners would be, and it was inexpedient to give them too much power. But MR. BERNARD thought that if we were to carry out that view fully, we should be stultifying ourselves. The second objection to the amendment was that there was great danger that the elective Commissioners would raise no money, or if they expended any money at all, they would expend it on objects which to Europeans would appear useless or absurd; and he referred specially to expenditure on the erection of temples to monkey-gods. Most of us who had experience of municipalities in the mofussil knew that monkeys were often a grave difficulty in the way of townspeople. MR. BERNARD could remember one case of an old decaying Hindu town where the Municipal Commissioners had to, and did spend money on getting rid of the monkeys which infested the place. Their measures were not perhaps fully effectual, but he only instanced this to show that objects of municipal expenditure which seemed to us unnecessary and absurd did come home to the people. If the Commissioners were supported in such expenditure by the people whom they represented, we might well accept their measures. The hon'ble member also demurred to the argument drawn from the fact that in municipalities under the District Municipal Act taxation was high, and in towns under the District Towns' Act, which was a Magistrate's Act, taxation was low. He had said that we very well knew that only the larger and more opulent towns were placed under Act III of 1864, and the smaller and less wealthy towns under Act VI of 1868. MR. BERNARD was certain that that explanation of the matter would not hold good in all cases. He found that the town of Cuttack, with a population of 50,000 persons, Moorshedabad with a population of 40,000, and Berhampore with a population of 30,000, were all important and wealthy places with a large trade of all kinds; and Rampore Beauleah, and the two suburban municipalities of Calcutta, and some other of the largest and most populous towns of Bengal, were under Act VI of 1868, and subject to the management of the Magistrate, and in these towns taxation was low. On the other hand, comparatively small towns, such as Manickgunge, Purneah, and Commillah, were municipalities under Act III of 1864, and taxation therein was high. And it seemed to MR. BERNARD that after all the argument regarding the comparative incidence of taxation in towns governed by the Magistrate and in towns possessing Commissioners did to some extent hold water. The Hon'ble President had explained the views of the Government on this question. MR. BERNARD understood His Honor to say that he admitted there was much good in the amendment, but he did not feel sure that the existing municipal law would dove-tail in with the increased

powers it was proposed to give. The policy of the Hon'ble President therefore was a right one, and he therefore refrained from supporting the amendment on behalf of the Government. MR. BERNARD would leave the matter in the hands of the Council; he could only ask the Council to consider what had been said on both sides, and vote on the motion as they thought proper.

The motion was agreed to.

HIS HONOR THE PRESIDENT observed that as the Bill had just been amended, the consideration of the next motion on the list, for the passing of the Bill, must be postponed to the next meeting of the Council.

AMENDMENT OF THE ABKAREE LAWS.

THE HON'BLE MR. BEAUFORT moved that the Report of the Select Committee on the Bill to amend Section 9, Act XI of 1849, and Section 27, Act XXI of 1856, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Committee. He said that since the Report of the Committee was made, two memorials had been received by the Council, one of which was on behalf of the Bengal Temperance Society, of which Rajah Kalikrishna was the President. This memorial was generally in favour of the Bill; but they deprecated the approbation bestowed by the Government on excise officers who succeeded in enhancing the revenue, forgetting that increased revenue was due as much to a strict enforcement of the law as to an increase in the quantity of spirits sold. The memorial also contained certain suggestions, which, however, might with greater propriety be addressed to the executive department. If any of these suggestions claimed the attention of the Council, they would be considered when the Select Committee again reviewed the other Excise Bill which he had introduced. The object of the Bill now before the Council was simply to empower the Board of Revenue to adjust and regulate the issue of licenses.

The other memorial which had been received was from the licensed vendors of liquor in Calcutta and its suburbs. They objected very strongly to the Bill. They commenced by informing the Council that their business had always been conducted with propriety; that they bore a very good character, and that they did not act in contravention of the law prescribed for the conduct of their business. And they said that the law as it stood was quite sufficient for all purposes. But the present law was not sufficient, because it did not enable the Board of Revenue to do what they considered necessary with regard to the mode of granting licenses and fixing the fees for such licenses. It was on that ground that the present Bill was introduced, and the question raised by the Bill was, whether they should or should not have that power. These vendors complained that the Bill would do them an injury, because they had invested capital in their business presupposing that they would not obtain licenses under the new rules. He took leave, however, to demur to that statement of the petitioners. These men had certainly not gone to any great expense in erecting buildings for their shops, and it was notorious that a large stock of

country liquors was never kept. It was difficult to understand on what the capital was expended. Under the present system, moreover, licenses were always given annually, and were revocable at the will of the Board of Revenue and the Excise authorities; the number of shops to which licenses were given had never been fixed, and in point of fact fluctuated from year to year; consequently these vendors could not demand licenses as of right, and they would have no just ground of complaint if at any time their licenses were not renewed. The petitioners said that a diminished consumption of spirits and an increased revenue might be properly obtained by increasing the duty on liquors, and not by the imposition of a heavier tax on licenses. That was a matter for the consideration of the Board; but so far as he understood the matter, it appeared to him inexpedient to raise the price of the liquors. These vendors also said that the number of shops in Calcutta and the suburbs was very small in comparison with the population, and suggested that the rate of fees for license should be fixed by the legislature; but MR. BEAUFORT thought that the fee ought not to be fixed by the law, because it would properly be varied from time to time with reference to the number of the shops and other circumstances. Therefore it appeared to him that these licensed vendors had shown no real ground of complaint with reference to the provisions of the Bill before the Council. The sole object of the Bill was very clearly set forth in it. It gave the Board of Revenue the power of regulating the issue of licenses—a power which was not conferred on them by the present law, and without which they could not introduce the system which appeared to them most likely to benefit the public.

He was not aware that any amendment would be proposed. He moved that the Report of the Committee be taken into consideration.

THE HON'BLE BABOO DIGUMBER MITTER said he perfectly agreed with the hon'ble member in charge of the Bill that the petitioners could not have any vested interest when the licenses under which they carried on their trade was renewable every year at the option of the Commissioner of Police. There was one evil, however, which he was afraid might result from the disposal of licenses by auction to the highest bidder, viz. the difficulty necessarily arising therefrom of using that discrimination in the bestowal of licenses in consideration of the good conduct and character of the vendors which it appeared from the petition had been hitherto rigidly exercised by the Commissioner of Police. The difficulty might, however, be obviated by the insertion of a section in the Bill disqualifying any one from bidding at the sale who had not a certificate of character to produce from the Commissioner of Police. He was aware this reduced the number of bidders, and might otherwise to a certain extent frustrate the object aimed at by the proposed measure; but if the character of the vendors was at all worth looking to, the sacrifice, he dared say, would not be considered too much.

THE HONBLE MR. SCHALCH said, with regard to the remarks which had fallen from the hon'ble member opposite (Baboo Digumber Mitter), he would observe that the Bill proposed to give the Board of Revenue full power as to the mode

in which the fees for licenses should be regulated. And as to respectable men only having licenses, he might state that at present no license was granted until a certificate from the Commissioner of Police was produced showing that there was no objection to the license being granted to the applicant. And he had no hesitation in saying that when licenses for liquor shops were put up to auction, one of the first questions would be whether the highest bidders were men of good character, and the highest offer would not be accepted unless we had reason to expect that the duties of a licensed vendor would be properly conducted.

His Honor the President said he would relieve the minds of hon'ble members by pointing out that not only the Board of Revenue had exercised a proper discretion in the grant of licenses, but he had looked into the matter and found that under the law no shop could be licensed until the Commissioner of Police had certified to the respectability and character of the person licensed. Therefore any system which the Board might adopt was subject to the positive provision of the law to which he had referred. Unless a person was certified to be a person of unobjectionable character he could not get a license, and that would entirely meet the objection of the hon'ble member. The sole object of the Bill was this. A monopoly for the sale of liquors was to be given, and the persons to whom that monopoly was given ought to be obliged to pay for it. But His Honor said on the part of the Government that not only should we strictly observe the law which required the certificate of the Commissioner of Police, but we should take care that the question of licensing should not be made a mere question of profit to that extent that the other considerations which had been alluded to should be subordinated to profit.

The Hon'ble Mr. Dampier said, he had just seen this memorial from the Bengal Temperance Society, and there was one remark in it on which he should like to say something. In the 3rd paragraph the memorial ran—

> "The temptations in the way of the people have been multiplied in a considerable degree by the efforts of the excise officers to enhance the revenue, probably stimulated by the fact that Government has often publicly recorded its approbation of the conduct of such officers as have succeeded in enhancing the revenue."

If that meant any thing, it meant that the Government had connived at the revenue being enhanced in any way, and it gave as a fact that certain officers who had enhanced the revenue had had praise bestowed on them without the Government looking closely to the way in which the enhancement had been obtained. With the exception of two years (1869-71) he was cognisant of every such order which had been passed by the Government in the Excise Department since 1860. He also knew what had been said and done by the Board during those years. And as far as that remark in the memorial bore the meaning which he had attributed to it, he denied it. He said it was not the case that since 1860 revenue officers had been praised by the Government or the Board of Revenue for raising the abkaree revenue without proper discrimination as to the means which they had adopted. He did not deny

that subordinate officers of the Excise Department, and especially new officers, were carried away by their zeal for the enhancement of the revenue. He did not deny that such indiscriminate praise might have been awarded; but that was before the year 1861, and not since that year. Since then, whenever it was observed that the revenue rose under a particular officer, the first and immediate effect on the minds of the Board of Revenue and the Government was to lead them to examine whether in enhancing the revenue the officer had not been acting illegitimately by throwing temptation in the way of the people, and so on. He thought that every person who had watched the orders passed and the temper of the Government and the Board since that year, would agree that there was no foundation in the imputation which had been made in the memorial.

He passed on to the Bill now before the Council. It was rather late to talk of the principle of the Bill. No doubt it had been fully explained since the hon'ble member in charge had asked leave to introduce it. But he saw from the public prints that the change proposed to be made was not understood even at this moment. Therefore he hoped the Council would bear with him if he stated as shortly as he could what the bearing and purport of the Bill appeared to him to be, under the correction of other hon'ble members of the Council. It was stated in one of the papers that—

"The effect of putting up the licenses to auction will merely be that all the vendors will be subject to additional taxation, and that some of them will be thereby driven from the trade—a clear injustice to those who have invested their capital in the expectation that they would be allowed to continue their business as long as their conduct should be satisfactory. The Bill is, like some others which we have seen of late, one of useless vexation and ineffectual aims."

He supposed it was admitted on all hands that it was absolutely necessary in dealing with this matter that private interests should be subordinated to general interests, and for that purpose that there should not be free trade in the sale of liquors and drugs. *Primâ facie*, of course, it was objectionable to interfere with trade at all; but in this particular instance it was considered interference was absolutely necessary; the trade must be more or less subjected to restrictions founded on police considerations (using the term in a broad sense). A certain number of shops were necessary to the public; but the asserted principle was that there should be a certain amount of trouble in getting at the liquor; that it should be necessary to seek it; and not that it should be thrown in every one's way by establishing a shop at the corner of every street and twenty more in the street itself. Now the effect of restricting the number of shops was to give rise to competition in obtaining licenses. Under the existing system there existed the power of restricting the number of shops to be licensed. The Magistrate of Police first gave permission that there should be a shop, and then the revenue officers granted the excise license. In Calcutta that procedure was very strictly carried out. In the mofussil he doubted whether it was so; whether so distinct a line was drawn between the law functions of the district officer as policeman, and his function as head of the revenue. But

the district officers had the right of restricting the number of shops; and that right, in theory at least, was exercised and ought to be exercised. Now the moment the number of shops within a given area was restricted, it was clear that a monopoly of the retail sale was created to that extent; the value of every remaining shop, the good-will of every remaining business within the area, was increased. Hitherto the holders of retail licenses in Calcutta had not paid tax in proportion to the value of their monopoly. He did not say that the license-holder did not pay more to the State as the value of his business increased, for he had to pay the fixed duty on the quantity of the liquor which he sold; but the increase was not proportionate; for, besides the duty regulated on quantity, the dealer had to pay a fee for his license, and, according to the existing law, this fee was not increased in proportion to the value of the business. The consequence of that was that the more the number of shops was restricted, the greater became the value of the remaining shops. In places like military cantonments, where the military authorities only allowed one shop to be licensed, he had seen very valuable monopolies, and abuses in obtaining such solitary licenses had come to notice. The object of the present Bill was that the holders of such monopolies, which had been created by the restrictive action of the police, should be made to contribute to the revenue of the State in some proportion to the value of their business. If this were not done, it was clear that as his own business increased by additional restrictions being placed on the number of shops, the dealer who was fortunate enough to retain his license, could afford to sell his produce at lower rates than before, for it would be weighted with a lower tax, and to that extent the great object of enhancing the price of such excisable articles to the consumers would be defeated. One of the objects of the Bill was to put an end to that state of things and to bring in a system under which the monopolist should pay tax in some sort of proportion to the value of his business. And the way that would be got at would be by letting the vendors themselves, those who were in the secrets of the trade, settle the price to be paid for licenses by bidding for them at public auction. In this view he believed that no objection could be made to the contemplated measure. And if any harm was done to private interests (for it was undeniable that in any thing of that sort there must be some injury to private interests), he believed the Government would deal with that matter as tenderly as was practicable. Some apprehension had been expressed as to whether under the auction system the interests of the public would not be sacrificed to those of the exchequer, the license being given to the highest bidder without reference to his character for respectability and orderliness. He believed that there was no real ground for apprehension on that score. The hon'ble member on his right (Mr. Schalch) would remember that when he was Commissioner of Police in Calcutta and Mr. Dampier was Revenue Commissioner of the 24-Pergunnahs, the Collector of Calcutta had granted certain licenses. The Commissioner of Police wrote and said that the licenses were granted without proper care, and he objected to them. MR. DAMPIER thereupon exercised his power as Revenue Commissioner of giving notice and cancelling the licenses. The matter

then went up to the Board of Revenue, and he received from them very severe treatment. They said that he had subordinated the interests of his own department to those of another (the police), and he received a very severe censure. Eventually, however, the matter was submitted to the Government, which happily took what appeared to him the only view that could be taken, and upheld all that had been done on the ground that considerations of revenue must give way to those of police and good order. He mentioned that as an instance to show that as the machine worked, it was not likely that fiscal considerations would be allowed to overweigh police considerations, in Calcutta at least, in settling the number of shops. The Commissioner of Police would not stand by and allow it, nor would the Government. Finally he must mention that he had spoken to-day entirely for himself, and not in any way on behalf of the Government of Bengal.

The motion was then agreed to.

THE HON'BLE MR. BEAUFORT moved that the Bill be passed.

HIS HONOR THE PRESIDENT observed that he would only like to say on the part of the Government, before this motion was put to the vote, lest any pledge might be supposed to be contained in the words which had fallen from the hon'ble member opposite (Mr. Dampier), that we should respect what were called the vested interests of publicans; he was not inclined to admit that they had any vested interests which were entitled to be respected by the Government. What the Government might do as a matter of policy, or what the Board of Revenue might do, he was not prepared to say; but he did say that the Government hitherto sold the right of opening liquor-shops from year to year only; that the person who took the license in this form had taken it in the form expressed, and not on any further implied terms; and that the Government was in no degree bound in regard to what the licensed-vendors might consider their vested interests. We all kne wthat what were called vested interests were very strong in England. The vested interests of publicans in England were so strong that no ministry, however powerful, had ever been able to stand against them. He hoped it was not so in Calcutta. This Bill did not bind the Government to sell licenses by auction. All that it provided was that the Board should lay down not only certain fixed rates which they were authorized by the existing law to do, but rates regulated in such manner as they thought fit. The whole history of the question had been very well stated by the hon'ble member, and he hoped there might be no mistake or misconception on the part of the public in regard to this Bill.

THE HON'BLE MR. DAMPIER explained that he thought His Honor the President had misunderstood what he had said. He said that if there were any vested interests injured by the action of this Bill, the Government would deal as tenderly as possible with them. He did not say that the Government would respect them. He put it on the principle that if the Commissioner of Police objected to the grant of any particular license, the license would not be granted. He would also wish to observe that what he had said was without communication with His Honor, and not in any way as representing the Government.

His Honor the President said he was quite sure that the Council would feel satisfied that the details of this matter were to be left in the hands of the Board of Revenue, a most capable Board, and that over the Board of Revenue they were superintended by the Government, who in the Revenue Department had the assistance of an officer who was so thoroughly conversant with the question as Mr. Dampier. Under these circumstances he hoped the Council would think that they could prudently pass the Bill.

The motion was agreed to and the Bill passed.

EMIGRATION TO THE LABOR DISTRICT.

His Honor the President moved that the Hon'ble Mr. Dampier be added to the Select Committee on the Bill to amend the law relating to the emigration of laborers to the Districts of Assam, Cachar, and Sylhet, and to regulate labor contract and service.

The motion was agreed to.

The Council was adjourned to Saturday, the 5th April 1873.

Saturday, the 5th April 1873.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General,*
The Hon'ble V. H. Schalch,
The Hon'ble H. L. Dampier,
The Hon'ble Lord Ulick Browne,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvie Abdool Luteef, Khan Bahadoor,
The Hon'ble B. D. Colvin,
The Hon'ble F. F. Wyman,
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor,
and
The Hon'ble Baboo Digumber Mitter.

MOFUSSIL MUNICIPALITIES.

The Hon'ble Mr. Dampier said the hon'ble member who had charge of the Bill to amend the District Municipal Improvement Act and the District Towns' Act had made it over to him. The clauses of the Bill had been settled, and one or two amendments had been made by the Council. The time which by the Rules for the conduct of Business was required to elapse after the amendment of a Bill in Council had passed, and it now remained only to pass the Bill. But it struck him that the clause which he had had circulated as a notice of amendment might advantageously be inserted in Section 2, paragraph 2, line 14, after the words "such commissioners." Hon'ble members

would see that the object of the amendment was to prevent any cantankerous person from raising a question as to the legality of the retention of his appointment by some Commissioner under the rule of rotation, and so perhaps causing money to be wasted in litigation. The amendment was so trifling that he should have no hesitation, if the amendment were carried, to apply to the President to suspend the rules in order that the Bill might be passed at this meeting.

[His Honor the President observed that it was not necessary to suspend the rules unless the Bill was materially amended.]

The Hon'ble Mr. Dampier then moved that in Section 2, paragraph 2, line 14, after the words "such commissioners," the following words be inserted:—

"In case such whole number is not evenly divisible by three, the one-third shall be as ertained by taking the number next below it which is evenly divisible by three, as the number to be divided."

The motion was agreed to.

His Honor the President said he would also venture, without notice, to propose an amendment which was not material. It appeared to him that the 8th section of the Bill ought to come before Section 7, inasmuch as the 8th section referred to a specific amendment, and Section 7 related to a general question which affected a number of Acts set forth in a schedule. The consequence of the transposition would be, that we should have the material provision first, and then the general Section 7, which would no longer be divorced from the schedule to which it related, but the latter would follow immediately after. He moved that Sections 7 and 8 be transposed.

The motion was agreed to.

His Honor the President said the rules which applied to the passing of Bills were as follows:—

"If, after the settlement of clauses, the Bill differs materially upon any important point from the form in which it was read in Council and published, it may be again published as amended and reconsidered after such time as the Council may order.

"If the clauses are settled by the Council as amended by the Select Committee, the Bill may at once be passed. Otherwise the Bill shall not be passed at the same meeting, but shall be brought forward again at a future meeting, and may then be passed with or without further amendment."

Consequently it appeared that the Bill not having been passed at the same meeting at which it was materially amended, it might be passed at this meeting with or without further amendment. And although in the exercise of his duty he should think that if a material amendment were now made, the motion for the passing of the Bill should be postponed, still, as the rule did not really require it and the amendments now proposed were not of a material character, the Bill might be passed at this meeting.

The Hon'ble Mr. Dampier moved that the Bill, as settled by the Council on the 29th of March, with the amendments just adopted, be passed.

His Honor the President said he might state to the Council that if this Bill should eventually become law, it was not his intention to enforce the elective provisions of the Bill on municipalities that were unwilling to adopt

them. He had said that he did not pledge himself that this Bill was in all respects such as to ensure success, but he thought the Council had very materially inproved the existing law; and if any municipality should express its willingness to try the elective principle, he should, in the exercise of the discretion vested in him by the law, enable them to make that trial.

The motion was agreed to, and the Bill passed.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. SCHALCH said it would be in the recollection of the Council that at the last meeting on which the Bill to amend the law relating to embankments and water-courses was considered, all the clauses of the Bill and the Schedules down to Schedule E had been settled. At a subsequent meeting he had proposed to bring forward some mere verbal amendments in regard to Section 41, and the hon'ble member on the left (Moulvie Abdool Luteef) had given notice of an amendment in the same section. But Mr. SCHALCH had then been unable to attend, and the matter was dropped for the time being. He had now to move that the Report of the Select Committee be further considered in order to the settlement of the clauses of the Bill.

The motion was agreed to.

THE HON'BLE MR. SCHALCH said he had now to move the following amendments in Section 41:—

In line 13 to omit the words "the collector;"

In line 14 to omit the word "him" and substitute for it the words "the collector;"

In line 16 to omit the words "shall find" and substitute for them the words "it shall be found."

The effect of the alteration would be to make the first part of the section run thus—

"If at any time after the passing of this Act, on inquiry made by the Collector, as far as possible in accordance with the provisions of part III of this Act, it shall be found," &c.

The object of the amendments was merely to bring the wording of this section in accord with the wording of the following Section 41A.

After some conversation the motion was agreed to.

THE HON'BLE MOULVIE ABDOOL LUTEEF said he begged to move an amendment, that the following paragraph be added to Section 41:—

"The Lieutenant-Governor may at any time after the passing of this Act, by a Notification published in the *Calcutta Gazette*, direct that any embankment not mentioned in Schedule E be included in the said schedule, and the provisions of this section shall apply to such embankment"

The amendment, he thought, was clear enough. But he wished to explain that as in this section there was a provision that after an embankment was included in Schedule E the Lieutenant-Governor would have power to direct that the same should no longer be included in the schedule, if after inquiry it was found that the maintenance of that embankment was no longer necessary, and also to restore any embankment so excluded, he thought it was but fair to provide

that any embankment not now included in the schedule should hereafter be included if the Lieutenant-Governor found sufficient reason to include it. As far as the Council had information before them, they had a list of embankments supplied by the Government and the local authorities, in accordance with which the schedule had been prepared. There might be other embankments not included in the schedule, and which, in justice to the parties interested, it might be proper and fair to include amongst these embankments; and he was therefore of opinion that the Government should have full power to include such embankments in that schedule without applying for a further law to amend this Act. For these reasons he thought it was proper that the addition which he had proposed should be made to Section 41.

THE HON'BLE BABOO DIGUMBUR MITTER said, so far as any new lines of embankments were concerned, he had no objection to support the amendment. In fact the power proposed to be conferred on the Lieutenant-Governor was almost a necessity arising from the enactment of Section 41 of the Bill. As regards, however, the embankments which were now being maintained at the cost of the State, but would no longer be so maintained when the proposed measure became law, he must, to be consistent with what he had previously said on the subject, oppose the amendment. Because as respects such embankments, the head of the executive Government was no other than one of the parties to the matter in dispute, the zemindars who were about to be deprived of the benefits they had hitherto enjoyed from them being the other party, and the amendment if carried would have the effect of investing one of the parties, viz. the executive Government, with the power of deciding the question at issue between itself and the zemindars. He had not the slightest doubt but that the head of the executive Government would be perfectly unbiased in dealing with such questions; but he objected on principle to such an union of the executive and judicial functions in the same person in cases in which, as representing the public, he was directly interested.

He was well aware that after the passing of the Act with Section 41 preserved *intact*, the jurisdiction of the Civil Court over such cases would at once cease; but as he had objected to the provisions of that section, he must in order to be consistent oppose the amendment so far as it affected the question of embankments now being maintained at the cost of the State but not included in the schedule, though judging from the liberal spirit in which the difficulties involved in the question of the schedule were now being met, such precautions as he was now contending for would hardly be necessary.

HIS HONOR THE PRESIDENT said it might be necessary to clear the ground somewhat to come to a distinct understanding of the meaning of the provision contained in the amendment. If it was accepted it would not be in the power, and he could assure the Council it would not be the intention of the Government to use this amendment as a means for shutting out any course of action the hon'ble member on the right (Baboo Digumber Mitter) or any other hon'ble member might wish to take in regard to embankments not included in the

schedule. So far from trying any sharp practice, we had adopted a most honest and straightforward course. We had placed before the Council the fullest information in our hands. We had laid before the Council our private records, which showed exactly what we now kept up. We had shown what we proposed to keep up, and we had shown the very small number of embankments that we did not propose to include in this Bill. We proposed to give the longest time reasonable to enable all parties to make any representations they thought fit, so that the hon'ble member to whom he had alluded, or any other hon'ble member, might say "this embankment ought to be included." It would be for him and other hon'ble members to propose any embankments to be included in the schedule, if they had ground for doing so; and if these were included, they would not be directly or indirectly affected by the amendment. The effect of the proposed amendment was that if hereafter it should be discovered that for the public interests it was desirable that the Government should keep up certain embankments, they would be added to the list. It might perhaps be that a case might arise in which the Government was not bound to keep up an embankment, but the interests involved might be so great, and the difficulties of apportioning the costs amongst the parties concerned might be so great, that the Government might be willing to keep it up. In such a case this amendment would enable the Government to add this embankment to the list of embankments in the schedule. His impression was that this amendment would rarely be used for the purpose indicated by the hon'ble member who proposed this amendment, namely to include in the schedule any embankment which had been wrongly omitted.

The arrangement now was to give fair notice to all parties interested to come forward with any embankments which ought to be included in the schedule, and this clause would remain as an additional precaution to enable the Government to add to the list any additional embankments which for any reason the Government might be willing to maintain.

The Hon'ble Mr. Schalch said, he did not think there would be any reason to take advantage of this amendment in view to correct the list of the embankments now proposed to be maintained at the expense of Government. It was proposed that the Bill would be again published for general information, and every opportunity would be afforded to the parties interested to speak out if any embankment which the Government was bound to maintain had been omitted from the schedule. But there was one case in which this amendment might be very useful. The principle of the Bill was that all embankments should be maintained by the persons interested; but it might happen—the case was very likely in Hidgely—that there might be some new embankments which the Government might wish to keep up for the protection of their estates in the late salt line; and it might desire to make public its determination to maintain them solely at their own expense by entering them hereafter in the schedule. Mr. Schalch thought the provision was a useful one, and he would therefore support the amendment.

The motion was agreed to.

THE HON'BLE MR. SCHALCH said, all the sections of the Bill having now been disposed of, he proposed to go on to the consideration of Schedule E. On a former occasion he had explained that the principle on which the schedule had been prepared was that the Government would only include in the schedule all those embankments which the Government were bound to maintain. He then explained that they were of three kinds; first, embankments connected with the great Burdwan estate as that estate was constituted at the time of the permanent settlement. And he explained that subsequent to that settlement a contract had been entered into with the Rajah of Burdwan, whereby the Government undertook to maintain all embankments necessary for the protection of that estate, which the Rajah had theretofore maintained at his own expense in consideration of a certain deduction from his sudder jumma. By that contract, in consideration of the Government maintaining those embankments, the sum so deducted, Rs. 60,000, was added to the jumma. That was certainly a decided contract, and in accordance with that agreement the Government would continue to maintain those embankments, and therefore the embankments so maintained were entered in the schedule. Those embankments were covered by the entries Nos. 1 to 38 of the schedule as it now stood in the Bill. They covered all the embankments which were required along the Salye, the Roopnarain, and the Damooda and Adjai rivers, and all the embankments in connection with the Burdwan estate. The second class of embankments were those in Hidgely. These formed the subject of inquiry in 1839, and at that time the Government decided that certain embankments should be maintained by the Government. Those embankments had since been so maintained. The Superintending Engineer of the South-Western Circle wrote, under date the 24th June 1872—

"It appears there are no embankments kept up at Government expense in that division except the first four descriptions of embankments enumerated in the category at page 33 of the committee's printed report, and which the Government have already accepted the obligation of maintaining at the public cost."

These were the embankments, beginning in the schedule with No. 39, with the great sea-dyke extending up to the river Hooghly, a distance of 40 miles, and including the embankments along the rivers which flowed into the Hooghly from the interior Nos. 40 to 54, covering in all a distance of 345 miles 352 feet. These formed the second class of embankments. The third class of embankments consisted of those which were kept up for the protection of stations. The Board, in their report of 2nd May 1837, which was before the Council, suggested that such embankments should be maintained by the Government. That suggestion had been accepted, and they had been so maintained. These consisted of the embankments numbered 55 and 56, the old and new embankments, to protect the station of Rampore Beauleah, and the embankment numbered 57, to protect the station of Maldah. In regard to this latter embankment a doubt was expressed by an hon'ble member as to the correctness of the names of the pergunnahs inserted in the schedule. On further inquiry he had ascertained that the actual terminal point of the embankment was situated

in smaller pergunnahs lying within the large pergunnah named in the schedule. Therefore he would first ask for leave that in item No. 57, lines 6 and 8, for the word "Sheershabad," the words "Ameerabad" and "Vatra" should be respectively substituted.

The motion was agreed to.

That disposed of the whole of the embankments in the Bill as it now stood But since the last occasion on which this matter was before the Council, the Government had taken the subject of the remaining embankments maintained at its expense into consideration. It had been stated that the delay in settling the schedule was due to the fact that the mover of this Bill was himself ignorant of what embankments the Government were bound, and what they were not bound, to maintain. Mr. Schalch had long ago formed his opinion, and to that opinion he still adhered, that the embankments entered in the schedule now attached to the Bill, were the only embankments which the Government were bound to maintain. There were other embankments which were now maintained by Government, and it was a question how far the Government, though not bound to maintain them, was inclined to do so. In dealing with that question the Government of Bengal had to decide, not only with reference to their own funds and the allotments made to them, but in regard to the funds received from the Government of India for the purpose; and therefore some correspondence had been entered into with the Government of India on the subject. That correspondence had now been completed, and the Government were now prepared to state what further embankments they would undertake to maintain. To lay the matter fully before the Council there had been circulated a note by him on the subject, and with that was printed a statement showing all the embankments which on the latest information were found to be now maintained by the Government, in addition to the fifty-seven items included in the schedule attached to the Bill. It would be found at page 3 of the note that these consisted of four classes of embankments, 1st those in the 24-Pergunnahs, extending to 216 miles 138 feet; 2nd, of a long line of embankments in Moorshedabad, on the left bank of the Bhagiruttee, which extended in connection with certain roads and zemindaree embankments over a distance of 93 miles; 3rd, of an embankment on the Matabhanga river; and 4th, of the Khooly Khal line. Of the 93 miles of the Bhagiruttee embankments 72¼ miles were maintained by Government, and the remainder consisted of zemindaree bunds, and roads which served as bunds, the zemindaree bunds forming about 7¼ miles. For the reasons stated in the Note he certainly considered that the Government were in no way bound to maintain the Bhagiruttee embankments: the Government were under no engagement to maintain any one of them. But on the other hand the zemindars of the estates in the Moorshedabad district, which were protected by these embankments, agreed at the time of the decennial settlement that they would, according to custom, maintain the embankments within their estates. But however that might be, these embankments not only protected a very large tract of country, but also the important stations of Berhampore and Moorshedabad, and on the whole the

Government had determined not only to continue to maintain the embankments which they had hitherto maintained, but also that portion of these embankments which had hitherto been maintained at the expense of the zemindars.

MR. SCHALCH had yet said nothing about the embankments in the 24-Pergunnahs. The history of these embankments was fully given in the Note of the hon'ble member on his left (Mr. Bernard), and in the letter of the Board of Revenue of the 2nd May 1837, to which MR. SCHALCH had already referred. After much discussion the point arrived at was that the Government should either maintain these embankments or allow the zemindars to do so, giving for the repairs the sum of Rs. 16,000, which they formerly received from Government towards the expense of maintaining them. Shortly before that time the Government had actually abandoned these embankments, but on this report from the Board they determined that they should retain them. There was no distinct engagement that Government should maintain these embankments. But looking to the fact that they lay along the Hooghly and along the numerous streams of the Sunderbunds, where heavy inundations generally took place, the Government had determined to maintain them. These embankments commenced a little below Garden Reach on the left bank of the Hooghly, went down to north of Mud Point, then went across to the eastward along the Sunderbunds, turning up northwards and came back to Tolly's Nullah. So that the whole of the 24-Pergunnahs lay within a ring fence formed by these embankments. Of the remaining embankments now maintained by Government, there remained the Katcheekatta embankment on the right bank of the Matabhanga river. This was rather a portion of the works connected with the navigation of the Matabhanga river, but as it was very much in the nature of an embankment, to prevent misconception it was thought proper to bring it into the schedule. There remained of those now maintained by Government only the Khooly Khall embankment. He had annexed to his Note a correspondence with regard to this embankment. And he thought from a perusal of that correspondence the Council would concur in thinking that they were embankments not maintained formerly by the Government which the Government had not bound themselves to maintain, but which in the year 1869, in consequence of the heavy inundations of the previous year, had been repaired by Government with the distinct reservation that this concession was not to be held to pledge the Government to maintain them in future. But having got into the hands of the Public Works Department, they had been repaired from time to time. These embankments were not of very great importance, and fell quite within the province and power of the zemindars to maintain; and if it should be found on inquiry that the maintenance of these embankments was necessary, they would have to be maintained by Government at the expense of the zemindars, on the principle on which a very large number of embankments were now so maintained, the embankments in Midnapore, Sarun, and Tirhoot, being maintained in the same way.

The result of the inquiries had been that it was now proposed to introduce in the schedule the embankments numbered from 58 to 93, both inclusive, lying within the 24-Pergunnahs, and he would move accordingly.

The motion was agreed to.

MR. SCHALCH would now move that the Bhagiruttee line of embankments, set forth in item No. 94, be added to the schedule.

HIS HONOR THE PRESIDENT said he thought it was necessary that he should explain what might seem an inconsistency in accepting, on the part of the Government, the Bhagiruttee embankments, since in doing so the Government undertook certain duties that were undoubtedly the duties of the zemindars. He had on several occasions expressed his opinion that the zemindars were bound to perform certain duties which they had at the time of the permanent settlement engaged to perform; that they ought to be strictly held to these duties, and that it was contrary to principle, and to the duty of the Government to the people of the country, that we should relieve the zemindars of those duties and impose the expense of performing any such duties on the general tax-payer. It was now proposed to make one limited exception with regard to these Bhagiruttee embankments; the considerations under which the Government proposed to undertake this duty had been to a certain extent explained by the hon'ble member in charge of the Bill. The fact was that this was a long line of embankments protecting a very large tract of country. That line was in effect and reality, as it had been shown to be, one continuous line of embankments. It might be described as consisting of three classes of embankments. First, there were the embankments protecting the station of Berhampore and town of Moorshedabad which the Government was bound to maintain; secondly, there were the embankments of much greater length protecting large tracts of country, which we believed the Government was not strictly bound to maintain, but which for a long time past had been so maintained, and which therefore we were willing to maintain; and thirdly, there were the zemindaree bunds which were to this day maintained by the zemindars. But seeing that these various classes of embankments were in reality, or ought to be, one continuous embankment; seeing that they protected an immense tract of country, not only in the district of Moorshedabad, but in two or three other districts; seeing that these embankments were of such importance to the country; seeing that it would be a task of extreme difficulty and delicacy—that it would be in fact almost impossible to apportion the cost amongst the zemindars whom it benefited; seeing that the expense of the zemindaree portion of the embankment had hitherto been comparatively limited; seeing that we should be able, by taking over the whole embankment, to shorten somewhat the line, to make it more effective and effectual;—we had thought it consistent with our duty to make this concession to the zemindars to undertake to maintain the line as one continuous line, as a Government line of embankments, and not to charge the zemindars and other holders of land directly or indirectly benefited by the embankments. That was a concession of very considerable importance. That must be done

subject to the sanction of the Government of India, who paid for the maintenance of the embankments, and who had not yet been consulted on this point. He hoped that by scientific and careful management the Government would not lose much, whilst the people and the zemindars would be benefited. And with that view this Government was willing to accept this continuous line of embankment, if the Government of India did not object. He had no doubt the Council would not be unwilling to add it to the schedule.

The motion was agreed to.

THE HON'BLE MR. SCHALCH said the only other embankment remaining was the Katcheekatta embankment, marked as No. 95, in the list which he now moved should be added to the schedule.

The motion was agreed to.

THE HON'BLE BABOO DIGUMBER MITTER said he had to thank His Honor, on behalf of the zemindars and ryots as well, for the spirit of moderation and fairness manifested in meeting the difficulties which the question of the schedule at one time presented. When he last had the honor of addressing the Council on this subject, the difference between the miles of embankments now being maintained at the cost of the State, and those included in the schedule was 535 miles. It had now been reduced to 153 miles, and he had every hope, from the care and attention with which the inquiry on the subject was still prosecuted, that this difference would either altogether disappear, or be satisfactorily accounted for.

On the motion of the HON'BLE MR. SCHALCH the schedule as amended was then agreed to.

THE HON'BLE MR. SCHALCH moved that Schedule F be added to the Bill. The schedule referred to certain embankments in two pergunnahs in regard to which the Government had for many years paid a certain sum to the zemindars towards the repairs, the zemindars being bound to maintain them. It was now proposed that that payment should be continued as heretofore and disposed of in the manner noted in Section 41A. The schedule was as follows :—

SCHEDULE F.—(*Referred to in Section 41A*)

Pergunnah.		District.		Amount of contribution. Rs.	A.	P.
Futtehsingh	...	Moorshedabad	...	1,706	10	8
Rokanpore	...	Ditto	...	1,466	2	0

The schedule was agreed to.

HIS HONOR THE PRESIDENT said he proposed that the consideration of the Bill should be postponed for twelve weeks, and directed that the Bill as now amended by the Council be published in every alternate *Gazette* during that time.

EMIGRATION TO THE LABOR DISTRICTS.

THE HON'BLE THE ACTING ADVOCATE-GENERAL moved that the time prescribed for the presentation of the report of the Select Committee on the Bill to amend the law relating to the emigration of laborers to the Districts of Assam,

Cachar, and Sylhet, and to regulate contract labor and service, be extended for a fortnight. He said it was well known to the Council that this Bill was placed in his charge but lately, and that the important character of the Bill was such that he considered the Committee had not had sufficient time to make their report. He now asked for an extension of time. But it was necessary to state that the Committee did not intend to make a final report, but only a preliminary one at present. The reasons why the Committee would at present be unable to make a final report on this important Bill were obvious. The amendments proposed to be made by the Bill had two objects in view—the first related to the re-arrangement of the provisions of the Bill in parts, chapters, and short sections, clothing those sections in simple language in order that they might be clearly and readily understood; the second object related to the consideration of a few substantial amendments which were proposed to be made in the existing law. The consideration of those substantial amendments required some time and attention, and it was for the purpose of putting forward the views of the Committee on those substantial amendments that this extension of time was required. It would be found in the end that the substantial amendments proposed had for their object the comfort of the coolies and the protection of their lives. And he thought that instead of doing injustice to planters the Bill would be ultimately found, after due opportunity of maturing the Bill was afforded, to be beneficial to all parties concerned. Under these circumstances he asked for a fortnight's time to enable the Committee to make their preliminary report, and their report would, amongst other things, contain a recommendation that the Bill as amended by the Committee should be printed in double columns with the columns of the old Bill and the new Bill placed in juxtaposition and published in that form. A fortnight's time was asked for to enable the Committee to arrive at the point above indicated in the consideration of the Bill in reference to the inquiries directed by the Council.

THE HON'BLE MR. COLVIN said, in supporting the motion for an extension of time, he would say, speaking as a fractional part of the Select Committee on the Bill, that if the Council saw fit to grant an extension of time, the best endeavours of the Committee would be used to come to such a conclusion on the main features of the Bill as would enable them to make such a preliminary report as the President desired. And he would say that in so far as the differences of opinion on the Bill and the objections raised by the hon'ble member who usually sat on his right (Mr. Robinson) and himself related not so much to the objects to be attained as to the best means of attaining those objects, he thought it would not be difficult to arrive at a general agreement on the questions at issue, subject to the reservation of similar objections and differences of opinion on particular points and special sections. If the Bill was published in the form suggested with the clauses of the old law, and the new Bill placed side by side, such a publication would, so far as it extended, help those interested in the measure to make a readier and perhaps fairer comparison between the old and the new law, and enable those most conversant with the

practical working of the special subjects relating to it to note precisely the points in which changes were proposed, and to say whether in their opinion they were for better or for worse. No doubt a considerable amount of time and trouble would have to be devoted to the consideration of the Bill, and of the numerous papers relating to it, before it reached its final stage, but he trusted it would be time well spent and trouble rewarded with a satisfactory result.

His Honor the President said he hoped the Council would think the course proposed was a satisfactory one. It appeared to him to be better not to make two mouthsful of a cherry, but in the case of a very large mouthful as this Bill was, he thought it was an easier and more satisfactory way that we should make two bites of it. There could be no doubt that the susceptibilities of the gentlemen interested in tea plantations had been disturbed and excited by the introduction of this Bill. He believed it would be found that the change was not so much a change in the character and disposition of an old friend, as a more satisfactory re-arrangement of his dress. The learned Advocate-General had been good enough to take charge of the Bill, and the Committee had met several times. We had the greatest hope that when all were striving to attain the same object; when the representatives of Government who were fully desirous of promoting emigration, and when those who to some extent represented the great European interests engaged in tea; when men representing different views honestly strove for the same object with the desire of arriving at a conclusion, we might hope that in the course of the first few weeks a great many of the difficulties would be smoothed over, a great many of the differences of appearance which disguised our old friend would be got rid of, and he might be presented in a shape in which he might be received in a more dispassionate and unprejudiced manner than in the dress put upon him on his first appearance. That being so, the course proposed was that on this fortnight being given, the Bill should be amended as far as possible and then republished, and considerable further time would then be given to those interested thoroughly to consider the subject and to make such recommendations and representations as they might desire to offer, while the Committee also would, he hoped, continue their labours.

The motion was agreed to.

The Council was adjourned to Saturday, the 12th April, with an intimation that as that day fell in Easter week, the Council would not be asked to sit unless business actually required that there should be a meeting of the Council.

By order of the President the Council was further adjourned to Saturday, the 19th April.

Saturday, the 19th April.

His Honor the Lieutenant-Governor of Bengal, *Presiding*,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble V. H. Schalch,
The Hon'ble H. L. Dampier,
The Hon'ble Lord Ulick Browne,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvy Abdool Luteef, Khan Bahadoor,
The Hon'ble B. D. Colvin,
The Hon'ble T. M. Robinson,
The Hon'ble F. F. Wyman,
and
The Hon'ble Baboo Digumber Mitter.

EMIGRATION TO THE LABOR DISTRICTS.

The Hon'ble the Acting Advocate-General presented the preliminary report of the Select Committee on the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract labor and service. He said he did not think it necessary that he should enlarge upon the various provisions of the report, which expressed fully what had been done. The report was what it professed to be, a preliminary one. He would observe that the Committee had simply taken into consideration the papers placed before them in reference to the main features of the Bill. A great many arguments put forward in the papers resolved themselves into objections against certain provisions of Act II of 1870. He therefore hoped that if the recommendation to print the Bill in double columns showing the amendments made alongside of the sections of Act II of 1870 were carried out, a great many of the objections urged against the present Bill would be removed. It was for that purpose that he desired to make the suggestion as to printing in double columns.

It was said by Mr. Beaufort that the intention in amending the law relating to the emigration of coolies to the labor districts was to remodel the law and divide it in parts, chapters, and sections, taking care to couch the sections in simple language, in order that they might be readily understood, and that the Bill did not profess to make very many substantial alterations—it was in fact to be an old friend in a new dress. But that remark was not considered to be correct in many quarters. He hoped it would be found that the Bill as now amended showed that the principal provisions of Act II of 1870 were left untouched. The Hon'ble Member on the right (Mr. Robinson) was apprehensive that this Council was disposed to legislate a little precipitately in amending a law only in force for two or three years. That alarm might be very natural; but when the Hon'ble Member came to consider maturely what the main provisions of the Bill were, he would find that there was no cause for alarm. The old Act had been remodelled in such a manner that its main features and provisions were plainly discernible, and a few

substantial and necessary amendments had been introduced. THE ADVOCATE-GENERAL had thought it necessary to make these few remarks in order to point out that the desire of the Committee had been to amend the Bill as far as it could be done with regard to the suggestions made on the subject of substantial amendments of the law. The report showed that the Committee had restored certain provisions of the existing law. It also pointed out that the Committee had remodelled certain sections of the Bill respecting the prohibition of emigration at certain times of the year. They had also reconstructed Section 13, which enabled the Lieutenant-Governor, with the consent of the Supreme Government, to provide for the emigration of laborers to other parts of India. On the subject of garden-sirdars there had been considerable discussion in committee, and although we were anxious to meet the views of those who desired that it should be optional to register in Calcutta laborers engaged in the districts, we were unable to amend the existing provision. We had, however, endeavoured to meet the difficulty by providing such a clause as would be found to get rid of the inconvenience which might result from the registration of coolies in the districts in which they were engaged. Giving to the existing law his best consideration, it appeared to him that the proper construction of section 19 of Act II of 1870 was that it did not enable the garden-sirdar to register coolies engaged in the districts before the Superintendent of Transport in Calcutta. He thought that section 19 must be read with sections 15 and 18 of the Act, and when so construed, the terms of the section must be taken distributively. That being so, he was of opinion that the power of registering in Calcutta coolies engaged in the districts, did not exist. It was clear that if the power or right to register in Calcutta laborers engaged in the mofussil really existed, some provision would have been made for the payment of travelling expenses back to their homes, of laborers who might either be rejected by the Superintendent on the ground of unfitness, or might not be brought before such an official for registration. But there was no such provision in Act II of 1870 as last referred to. On the other hand, with regard to laborers engaged in the mofussil by recruiters and brought down to Calcutta, there was a clause providing that if a contract was not entered into within thirty days with a laborer, he should be supplied with such a sum of money as the Superintendent should consider necessary to enable him to return to the place where he was registered. For these reasons it appeared to THE ADVOCATE-GENERAL that under the provisions of Act II of 1870 it was improper on the part of garden-sirdars to bring down laborers engaged in the mofussil to Calcutta without first registering them in the mofussil. He had been informed that notwithstanding his construction of the law, a practice of registering in Calcutta laborers engaged in the districts by garden-sirdars had grown up and had not been found to be attended with inconvenience or injury. It was perfectly right for those who approved of the practice which had grown up, to support it with a view to have an express clause introduced into this Bill to carry it out. If this could be readily or simply done, an attempt might have been

made; but on reflection it appeared to him that without the establishment of a depôt in Calcutta for laborers brought down by garden-sirdars, it would be impossible to frame a clause to meet the particular contingency. The establishment of a depôt would introduce an unnecessary difficulty, and instead of simplifying matters would tend to complicate them. It had been consequently determined to leave the clause as it stood and meet the objection taken by providing in the first place that the coolies should be registered before any Magistrate of the district or sub-division through which he should first pass, and further providing to the effect that the employer or his agent should have power to cancel any contract on paying the particular laborer whose contract should be cancelled, his travelling expenses to the place where he was engaged. The Committee had, as pointed out, endeavoured to grapple with the difficulty, and THE ADVOCATE-GENERAL trusted that they had done so successfully. To him personally it appeared that it would be wrong in principle to allow a laborer to be brought to Calcutta without previous registration in the district where he was engaged. It might happen that if a laborer was brought to Calcutta without being registered in the mofussil, and if he complained that he was not taken to the Superintendent of Transport for the purpose of having his agreement registered, he might be met by the plea that he came of his own choice with his friend the garden-sirdar to seek for employment. We should in such a case have the statement of the laborer on the one hand and the statement of the garden-sirdar on the other; and unless the Magistrate or Superintendent of Transport were possessed of greater powers of discrimination than were ordinarily allotted to mortals, there would be considerable, if not insuperable, difficulty in the way of coming to a proper decision. Registration in the district was a starting point in the engagement of a laborer which a garden-sirdar could not overturn if disposed to deal improperly with a laborer.

Then the report went on to say that the Committee had altered section 46 in the manner proposed, rendering it obligatory on the Magistrate to countersign a recruiter's license, unless he should have reason to suppose that the person licensed was unfit to be employed as a recruiter. Section 71 was slightly altered by providing that the penalty prescribed for delay in despatching a vessel should not be incurred if the delay was occasioned by any casualty. We had also altered section 79 by providing that the master of a vessel should be bound to report the arrival of his vessel at any particular place, and remain there for not less than six hours of daylight to enable the Magistrate to visit the vessel; and in lieu of the power of detention given to the Magistrate by section 82, we had given the power of detaining the vessel for not more than five days. Enquiries had shown that it was rarely found necessary to detain a vessel for more than five days. This was a preliminary report, and if it should be discovered that the period of five days was too short or too long, the provision might be altered accordingly.

Then we came to the subject of localities unfit for the residence of laborers. This clause had occasioned some alarm. But THE ADVOCATE-GENERAL thought that

section 120 of the original Bill, being section 119 of the amended Bill, should not have that effect, because it was the same in substance as a similar provision in the existing law. There was a difference of phraseology. Instead of using the words "unfit for human habitation," the section provided that the contracts of the laborers should be cancelled if the estate was in a condition so insalubrious or in such a situation as to be unfit for the residence of laborers. The Bill was framed in a manner calculated to make it plain and simple in character: it dealt with matters in a simple and clearly intelligible manner, discarding the use of terms or words of doubtful or obscure meaning. Section 119 simply altered the existing law by giving it a more practical form and clothing it in language free from vagueness or uncertainty. Having supplied a certain form of machinery for a proper enquiry into the fitness or otherwise of an estate or part of an estate for the residence of laborers, it necessarily provided that if a garden was unfit, from situation or condition, for the residence of laborers, the contracts of laborers for the time being should be declared null and void. It was said that such a provision was tantamount to closing a garden. It only discharged men from the obligation of laboring in a district or garden where it would be fatal for them to reside. It was a piece of humanity not calling for any alarm, but rather exciting the sympathy and deserving the approbation of those who had to deal with emigrants. He would pass on to section 120 of the amended Bill, being section 121 of the original Bill. This section as drawn made certain average rates of mortality conclusive of the question of the unfitness of an estate for the residence of laborers. We thought that upon any average rate of mortality taken by itself no safe or certain conclusion as to unfitness for residence could be formed. We had, however, considered that the average rate of mortality as stated in the section might well constitute a starting point, enabling the Lieutenant-Governor to order certain enquiries to be made by a medical officer required to visit an estate, and record information on the points indicated in the section. First, the cause or causes of such mortality; secondly, the want (if any) of due care or precaution, and of the adoption of proper and available sanitary measures, on the part of the owner of the estate or the employer causing or contributing to such mortality; and thirdly, the fitness or otherwise of the estate for the residence of laborers, and the reasons thereof. And if it should turn out that the mortality was to be attributed to the negligence or to the want of sanitary measures on the part of the planter, the Lieutenant-Governor should have power to declare that particular garden unfit for the residence of laborers. THE ADVOCATE-GENERAL remarked that the provision was salutary, and he thought that the Governor of a province should have some power to act summarily in cases of necessity arising from carelessness and negligence. The enquiry was to be a fair and open one; the parties might appear and put forward any statements they thought fit. It could not be urged with any propriety that it would be hard to put this provision in force in cases in which any excessive amount of mortality had arisen from neglect or default on the part

of the planter. We had merely given power in cases of unfitness for residence resulting from the neglect and default of owners.

The power of putting an end to the contracts of laborers in cases of mortality arising from situation, was a more difficult one to deal with. He had not been able to satisfy himself that climatic situation could be the cause of excessive mortality in a particular garden, without extending its baneful influence over a very much larger area. He thought the power of putting an end to contracts in cases in which unfitness for residence arose from situation, should be exercised under the previous section, where the enquiry to be held was to be full and comprehensive. If those who were interested in the lives of their laborers did their duty by keeping their gardens in a fit and proper condition, there would be no occasion for the exercise of the summary power which had been conferred.

THE ADVOCATE-GENERAL then passed on to the subject of contracts of time-expired laborers. The Committee were unanimous that Chapter 17, providing for the registration of contracts by time-expired laborers, was unnecessary, as it was advisable not to interfere with the free action of laborers who had performed their contracts. The Committee had therefore struck out that chapter, as also section 117 of the existing law, which contained a provision subjecting time-expired laborers to certain sections of the Act. The Committee had altered section 106 by providing that returns were to be made of *all* laborers on an estate, whether time-expired or not.

The next subject referred to in the report was neglect of work and arrears of wages. The Committee considered that no sufficient reason existed for the passing of such a law having special application to the tea districts. If it was considered that the country required a general law defining the rights and liabilities of master and servant, the subject should be dealt with under a more general and extended form of legislation.

During our sittings we came to the conclusion that it would be as well to frame forms of contract and release, but not having sufficient information before us we were unable to do so. We had therefore left the clause of the Bill upon that point as it stood, and had announced our intention hereafter to frame such forms and append them to the Bill. The Committee had also reserved to themselves the liberty of re-considering and re-amending any of the provisions of the Bill. We recommended finally that the Bill as now presented, together with the corresponding sections of the existing law, should be printed in double columns. THE ADVOCATE-GENERAL sincerely hoped that the endeavours of the Committee to do their best would prove beneficial to employer and employed, and that as the protection and preservation of the lives of emigrant laborers were necessarily blended with the prosperity of the planter, he trusted that the efforts of the Committee in the direction of the amendment of the present law on matters which were calculated to contribute to the health of laborers would be entirely successful. Although, as a general proposition, it was undesirable that the Council should interfere with the working of a law so recently passed

as Act II of 1870, and framed with the greatest ability and care, yet it should be borne in mind that a new combination of circumstances necessarily called forth fresh legislation. Those who framed Act II of 1870 could not be supposed to provide beforehand for all possible cases or combination of circumstances. It was their duty and object to put forward and inaugurate a general scheme for the regulation of emigration to the tea districts; and though they had accomplished their purpose in a successful manner, it could not be affirmed that it was possible to have exhausted the subject for all time, and in respect of all the varying circumstances attendant on emigration. Experience had shown us that on several points the amendment of the existing law was required. One of those points was the detention of a vessel in which cholera or other infectious disease had broken out amongst the emigrants. On the breaking out of cholera or other infectious disease, it had been found most beneficial to land coolies on shore for a time, and thus to check or remove infection; but for such a purpose the vessel must be detained. The existing law contained no warrant for the detention of a vessel under the above circumstances. It had therefore been deemed advisable to make a short provision in the present Bill for the detention of vessels. Almost all matters which possessed certain decided advantages had their corresponding disadvantages, and if a solitary passenger was, or a few passengers were, detained four or five days in any place, the injury to the person or persons so detained was far less than the manifest and irreparable injury which might be caused if (there being no power of detention) the coolies were allowed to proceed on their voyage with a fast-spreading and infectious disease amongst them. The necessity for such a provision having been established by experience, it became the duty of the Government to take steps to amend the law; and if Government had not ventured on the measure contained in the present Bill, the reproach of apathy, and the want of a due consideration of its duties, might well have attached to it. Then, in reference to unfitness of localities for the residence of laborers, the existing law did not contain sufficient provision. Its machinery was not very simple and was somewhat of a dilatory character. A summary remedy was required in certain cases of necessity, and the present Bill proposed to arm the local Government with certain summary powers limiting their exercise within certain well-defined and legitimate limits. Although a certain percentage of mortality could not be taken as conclusive of the unhealthiness of a locality, the factum of unusual and excessive mortality could not be fairly or properly overlooked. The present Bill proposed to give that fact significance and prominence in the institution of certain enquiries naturally arising out of it, and to visit the owners of gardens who had been neglectful of obvious and humane duties with consequences of which they could not be justly heard to complain. Then, again, the inspection of coolies in charge of garden-sirdars by a proper medical officer before being put on board a vessel was also a necessary change in the law which was required. Further, in regard to time-expired laborers it was unwise and undesirable to subject them any longer to checks and restraints under the law. The planters themselves affirmed that time-expired laborers having become accustomed to the

country, checks or restraints were unnecessary, and that being so, it was the duty of the Government to relieve that class of laborers. In conclusion, THE ADVOCATE-GENERAL said that though it was very unwise to legislate hastily and without due caution and reason, it was apparent that the circumstances to which he had fully alluded rendered legislation necessary, and he therefore thought that no ground whatever existed for accusing the Government of precipitation, or suspecting it to be influenced by any improper desire of interfering unduly between employer and employed.

THE HON'BLE MR. WYMAN said it would be remembered that when this Bill was introduced considerable discussion took place as to the desirability of introducing the Bill, and the hon'ble members opposite (Mr. Robinson and Mr. Colvin) took a decided tone against the Bill. The Bill now submitted to the Council was a totally different Bill from that which was submitted before. He understood that the argument of the learned Advocate-General went almost to this extent, that the objections raised by the public outside and the members of this Council with reference to the provisions of the Bill as introduced were scarcely now tenable; that in fact the present Bill was a mere redressing of the law, codifying, improving, and substantially altering it, but only in respect of certain important and necessary amendments which the Government desired to make. MR. WYMAN submitted that that argument was scarcely borne out by the facts. The difficulties raised by the hon'ble members opposite had apparently all been removed by the alterations made by the Select Committee in the amended Bill before the Council. He thought it could hardly be contended that the objections raised were not sound and reasonable ones. It had never been contended that the Government should not have the right to amend a law, however recently passed, when it was found that an amendment was necessary; and he understood that the public and the planters and others interested in this subject had never objected to any reasonable amendments in the law. They had never objected, and did not now object, to any provision by which greater security to life was attainable. But they said, and he thought justly, that the Act as proposed to be amended contained harsh, unnecessary, and impracticable provisions. The proof that they were correct and that they did not make a vexatious opposition was found in the fact, which to his thinking was conclusive, that their remonstrances had been met by the withdrawal of the disputed provisions of the Bill. As the Bill was now drawn there could not, and would not, (he thought) be opposition to the alterations proposed. It was objected that it was quite impracticable that a garden-sirdar should receive a power of attorney, and that provision was struck out from the Bill. It was also objected that fines imposed upon garden-sirdars should be recovered from their employers. That provision also had been struck out. It was pointed out that the provision empowering the Magistrate to refuse to sign garden-sirdars' licenses was unsafe, as he would not have the opportunity of making himself acquainted with what it was necessary for him to know. That provision had been considerably modified. Chapters 17 and 18 relating to time-expired laborers, and the definition of the obligations of master and servant, had been entirely struck out;

and as to the power of the Lieutenant-Governor to declare a district unfit for habitation by imported laborers, we saw the important modification that when the Lieutenant-Governor had *ascertained* that a certain place was unfit for habitation by reason of locality or want of sanitation, emigration to such place might be prohibited. MR. WYMAN thought that nothing could be fairer or more proper than such a provision. But as the Bill originally stood, it was in the power of the Lieutenant-Governor to stop emigration in the absence of any such information or enquiry. Then, again, the unhealthiness of any plantation had been defined to be unhealthiness of locality or unhealthiness arising from the want of sanitation. That, he thought, was a very proper distinction to make, a distinction which was now far clearer than it was before. The learned Advocate-General said that that was what was intended, and that the Committee had merely defined more clearly what was intended originally. But the definition in the original Bill was so doubtful that the Lieutenant-Governor could act under it merely on the percentage of mortality. But now it was clearly laid down that the garden must be defective either in sanitation or unhealthiness of locality. The amendment made was so important and so undeniable that very few would now object to that provision. Then, with regard to contracts made by time-expired laborers, a change had been made; and that was another provision which was the subject of objection. So that, as the Bill now stood, he did not think that the public or those interested would be likely to complain of it. The purpose of his remarks was to show that the objections raised by the public and those interested, were in respect of the Bill as it stood at the time, and that they were reasonable objections, and that those objections were not made with any idea of thwarting the Government or opposing the Bill simply because it was an amendment of the law. The Bill was one which, in their view, was a cause of alarm by reason of the somewhat arbitrary and impracticable provisions proposed to be introduced in a law which was found to work tolerably well. Not simply that the Bill was not sufficiently understood, but that it was so framed that it could not be clearly understood. As now drawn there would be no such objections; and he thought that it would be most unreasonable if the persons interested took objection to these most rational and proper provisions. They should rather be grateful to the Government for taking measures for the security of life which circumstances had shown to be necessary. The Council were greatly indebted to the Select Committee for the important and beneficial changes they had made in the Bill.

HIS HONOR THE PRESIDENT said, before finally putting the question to the Council, he would only say a very few words. He did trust that the course followed by the Government and by the Committee of the Council, and the observations made by his hon'ble friend Mr. Wyman, would convince those outside that sooner or later (HIS HONOR said sooner, but the hon'ble member said later) we were inclined to meet the reasonable views of that portion of the public who were interested in the cultivation of tea. We wished to narrow the breach between the Government and those so interested; we wished

to smooth over the difficulties, and meet the tea planters as far as we could. His Honor was not prepared to admit that the Bill brought in was so bad a Bill as the hon'ble member on the left (Mr. Wyman) would lead us to believe. He was not prepared to admit that the changes adopted by the Select Committee were of so radical a character as the hon'ble member had represented them to be. They were not so much radical or structural changes, as the smoothing off of difficult corners, the rounding off of angles which seemed to present difficulties, and which seemed to have caused outcry and objections. At the same time this rounding of angles was a work of the greatest importance which would have, he hoped, the effect of bringing round a great deal of the feeling which was against us, and we were under the greatest obligation to the Select Committee for the work which they had done so excellently.

He trusted that the explanations of the learned Advocate-General who was now in charge of the Bill, and who had taken so great a part in it, would convince the public that the proposals now submitted were not unreasonable proposals: that they were worthy of consideration, and he hoped that with more or less modifications they might be accepted.

The learned Advocate-General had so clearly explained the nature of the changes proposed by the Select Committee, that His Honor need not say much at present about them. He would merely allude to one change, which was in some respects a radical change. He alluded to the striking out by the Committee of chapters 17 and 18 of the Bill, chapter 17 relating to contracts by time-expired laborers, and chapter 18 relating to the general question of neglect of work by laborers, and the recovery of arrears of wages, as between the employer and the employed. The Advocate-General had told us that those chapters had been struck out with the consent and approval of two members of the Committee who were practically interested in the subject, and who in some degree represented those engaged in the tea-cultivating districts. His Honor had said that if that course commended itself to those hon'ble gentlemen, the Government were ready to accept that view. It appeared to him that there was nothing like free trade. When you had to deal with men who had lived in the gardens, men who were not to be conveyed there under contracts made in distant parts of India; when you had to deal with men who were in the tea districts, there was no reason why special laws for regulating the relations of master and servant should be applied, unless those interested thought it was better that such laws should apply. If those interested were satisfied that contracts made with time-expired and local laborers should be left to the operation of the ordinary laws of the country, the Government was satisfied and did not wish to press upon them any special law. At the same time there was one observation which His Honor wished to make for the consideration of the Council and those who were interested in the matter, that an Act passed for the Presidency towns of Calcutta, Madras, and Bombay, and known as the Artificers' Act, had been extended to certain of the tea districts, and had been applied for regulating the relations of the employer and employed there, that is, of the coolies. He might tell the members

that in his opinion it was extremely doubtful whether an Act of that kind, passed for the regulation of the relations between tradesmen and artificers in the Presidency towns, was properly extendible to the tea districts. He believed that it was not properly extendible to the case of coolies in the tea plantations: it was never intended to apply to such cases; and his view was that Government ought to withdraw the operation of that Act from those districts; that that Act must cease to operate in the tea districts. There would then be no summary or special mode of address, unless some special provisions were put in this Bill. If those interested agreed to strike out chapters 17 and 18 of this Bill, the Government agreed to that view, but then there would be no special law in the tea districts, and the relations of master and time-expired and local laborers would be regulated by the ordinary laws and by no special law whatever. That must be quite thoroughly understood.

The Bill was then directed to be published in the *Calcutta Gazette*, together with Act II of 1870, in double columns, and the consideration of the Bill was adjourned for two months.

HOWRAH LIGHTING-RATE.

THE HON'BLE MR. DAMPIER, in presenting the report of the Select Committee on the Bill to provide for the levy of a lighting-rate in Howrah, said, the Council having accepted the principle of the Bill both as regards the portion of Howrah now lighted with gas, and also as to future extensions, had referred the Bill to a Select Committee only for consideration of the form in which it should be passed. He mentioned this because the hon'ble members were aware that there had been some agitation in Howrah against the Bill, with which, if he understood its character rightly, the Select Committee were not concerned. He had not seen the memorial which had been presented, but he understood that it was against the principle of the Bill, rather than the details. That was a matter which concerned the Council at large, and not the Select Committee.

He would now proceed to state what had been done in Committee. They found in the original Bill provision made for imposing a tax before arrangements were made for lighting the town. The Committee thought that would not be advisable, and had therefore provided that no tax should be imposed until everything was ready for lighting the lamps. The Municipal Commissioners were to define the portions of the town proposed to be lighted, and they were to submit to Government a scheme for lighting, and on the Lieutenant-Governor being satisfied that the scheme was sufficient, he might authorize the imposition of the tax; and even then the tax was not to be leviable until the lamps had been actually lighted. The next change made was that, although the tax was to be ordinarily leviable from occupiers, in those cases in which a house was occupied by tenants in severalty, as by tenants in stories or flats, the tax in the first instance should be levied from the owner, who should have the legal power of recouping himself in the same way as if the tax were rent due to him from his tenants. Lastly, the Bill, as originally drafted, provided that questions of compensation should be decided by a Judge

of a Small Cause Court. MR. DAMPIER thought that was an excellent provision. But this Bill was to be part and parcel of Act III of 1864, and was to be read as a part of that law. Act III of 1864 contained other provisions as to compensation, but no special procedure was laid down for the determination of such compensation. Therefore the Committee had thought it would be inconsistent to provide that compensation in connection with gas works should be awarded by a special procedure, and that other compensation due under the same Act should be left to be settled by other means; the Committee had therefore struck out the section relating to the determination of compensation by the Judge of the Small Cause Court.

With reference to the agitation which had taken place in Howrah, he proposed to ask that the consideration of the Bill be deferred for six weeks at the least. The Bill as amended by the Select Committee would be published, and those interested would have an opportunity of saying anything they might think proper. He would mention for the consideration of the Council, one suggestion which had been made in the course of the deliberations in committee, that it was rather anomalous to bring in a Bill authorizing the imposition of a two per cent. lighting-rate, when the Council had before it evidence that a two per cent. rate would fall short of the actual cost of lighting. If the part of Howrah which was already lit with gas afforded data which were generally applicable to the future extensions, it would require a two-and-a-half per cent. rate to cover the cost. He thought it was worth the attention of the Council whether, on passing such a law as this, the Council should not give power to impose a rate which should be sufficient to pay for the whole cost of lighting with gas.

With these remarks he presented the report of the Select Committee, and moved that the consideration of the Bill be deferred for six weeks.

THE HON'BLE BABOO DIGUMBER MITTER said he wished to say a few words of explanation in reference to the report of the Select Committee. As an abstract question of justice there could hardly be any difference of opinion as to the propriety of legislating on the question before us without previously ascertaining the wishes of the rate-payers. For after all it must be admitted that gas-lighting is more a luxury than a necessity, and we knew that the majority of the rate-payers of the Howrah Municipality could not afford to pay for that luxury. But we must not forget that the Municipal Commissioners of Howrah were already under engagement, with the sanction of the Government previously obtained, to light the town with a certain number of gas-lights for a certain number of years; and it was too late now to question the wisdom of that engagement even if it were open to question. At the same time it was hard, he must admit, to levy the rate from those who neither wanted nor would have the benefit of gas-lighting. The Select Committee paid their best attention to this view of the question, and had made every attempt so to frame a section as would meet all contingencies. But they found themselves beset with all manner of difficulties, and the best solution they could arrive at was to leave every question touching

the extension of the lighting-rate to the different parts of the municipality to the final determination of the Lieutenant-Governor as a sort of appeal from the decision of the Commissioners; and the Select Committee were sincerely of opinion that, untrammelled by local prejudices and predilections, the Lieutenant-Governor would be best able to decide each case on its merits, and satisfactorily to all the parties concerned.

THE HON'BLE MR. WYMAN said, as the report of the Select Committee was not before the Council, it was somewhat difficult to go into this question; but judging from the remarks made, especially from what had fallen from the hon'ble member opposite (Baboo Digumber Mitter), he gathered that the expenditure on account of lighting by gas was now being incurred. He scarcely, thought that he understood the hon'ble member rightly. But he thought the hon'ble member had said that the Committee had found themselves in a difficulty, inasmuch as the Municipal Commissioners of Howrah had already entered into a contract for lighting the town with gas, and that the Bill gave power to levy a rate to defray the cost of such lighting. If that was the correct interpretation of the hon'ble member's remarks, it seemed to MR. WYMAN to be a roundabout way, first to do something that was not sanctioned, and then to come up to this Council for a legislative enactment to sanction a tax to defray the cost. It might be that the Municipal Commissioners theoretically were those who should say how the municipal fund should be expended, and that a rate should be levied for lighting the streets with gas; but we could not afford to ignore the majority of the rate-payers. He was not aware whether the rate-payers who had petitioned the Council represented anything like a majority of their body, and of course it would greatly depend on that point whether their representations were entitled to weight; because, supposing the objections represented a very small number of the rate-payers, the matter might, he thought, be left to the discretion of the Commissioners. But if the objections emanated from a large proportion of the rate-payers, it would be the policy of the Government to say that as the imposition of the lighting-rate was contrary to the wishes of a large proportion of those who had to pay, we could hardly compel the rate-payers to pay the tax. As far as works of emergency were concerned it would be different, but as regards lighting by gas it was more a luxury than a necessity, and it might not be desirable to impose a rate for the purpose. Looking to the position of Howrah, which was a town scattered very considerably, with houses at considerable distance apart in long lines of roads, he thought it was very doubtful whether lighting by gas was quite a *desideratum* or an economical measure to adopt. And therefore, when he heard of this proposed taxation, he thought that it should be considered very carefully whether we should sanction it in the face of a decided objection on the part of those interested.

HIS HONOR THE PRESIDENT said he thought the course proposed to be taken in deferring the consideration of the Bill would sufficiently show the Council that the Government was not inclined to hurry the passing of the Bill. In fact, we proposed that the report of the Select Committee and the Bill as amended by them, should be gazetted for a considerable period, for this reason,

that we might have the opportunity of ascertaining the wishes of the rate-payers before the report of the Committee was taken into consideration by the Council. A petition which had been received from a public meeting held in Howrah had not been circulated to the members. The general purport of the petition was that the meeting were opposed to the lighting of Howrah with gas and would be satisfied with oil lamps. The petitioners were unanimously of that opinion, but we did not know what proportion of rate-payers were represented by the petitioners. On the other hand it was clear enough, as stated by the hon'ble member in charge of the Bill, that the municipality had already pledged themselves to the lighting of the streets with gas in a certain portion of the municipality. It seemed to His Honor that a certain portion of the municipality, that was to say the town of Howrah, was a fit place for lighting with gas. It was a town with a considerable European population, a place of great manufactures and great trade, and the whole condition of the town seemed to require a civilized system of lighting and other civilized improvements. If the Municipal Commissioners of Howrah were pledged to this expense, it was proper that the expense should be borne by that portion by of the inhabitants who received the benefit of lighting by gas, and not by the municipality in general. That was the principle on which the Bill was drawn.

Then His Honor had received another petition from certain inhabitants of a portion of the municipality, who appeared to take a reasonable view of the matter. It was a petition of certain inhabitants of Shibpore, Ramkistopore, and other villages included within the municipality, that was to say the inhabitants of that portion of the municipality which did not constitute the town proper of Howrah, but was in the nature of outlying villages attached to the town. His Honor thought that these petitioners said with reason that it was very hard that they should be taxed for the lighting of the town of Howrah with gas: they suggested that the lighting of the municipality with gas should not rest with the Municipal Commissioners, but should be made subject to the sanction of the Government. The Committee had introduced that very provision in the Bill, and it seemed to His Honor to be a very proper provision. It would be very hard that those people who did not benefit by the lighting of the town with gas should pay for it; and it was reasonable enough not only that lighting by gas should be confined to the town of Howrah, but that the proceedings of the Commissioners should in this respect be checked by the Government, so that the luxury of gas-lighting should be introduced only where it was required, and that it should be paid for by those who derived the benefit.

The Hon'ble Mr. Dampier said with reference to the remarks of the hon'ble member opposite (Mr. Wyman), that he must explain that the lighting already done was not in anticipation of funds being provided by this Bill, as the hon'ble member had supposed. The Howrah Municipality had under the existing law power to devote the ordinary revenues of the municipality to the purpose of lighting, and that was what had been done. Under this arrangement of course the inhabitants of the suburbs of Howrah, such places as Ramkistopore, Seebpore, and the like, which had, as described by the hon'ble

member, long lines of road and a few scattered houses, who did not live within miles of the gas-lights, contributed towards the lighting of Howrah by gas, as much as the residents who lived under them. It was to get rid of this that it was one of the main objects of the present Bill to provide that those only who enjoyed the benefit of gas should pay the rate. As to the remarks which had been made as to whether lighting by gas was a luxury or a necessity, speaking on behalf of the Committee he said that it absolutely did not concern them as such. It concerned the Council as a whole. If the hon'ble member opposite (Mr. Wyman) and other hon'ble members had any doubt as to the principle of the Bill which the Council had once accepted, there would be time for reconsideration before the Bill came up for discussion again. But no such remarks were pertinent to the report of the Select Committee which was now presented.

The motion was agreed to.

REGISTRATION OF BIRTHS AND DEATHS.

THE HON'BLE MR. BERNARD presented the report of the Select Committee on the Bill for registering births and deaths, and moved that the report be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Committee. He said he believed it was in order to present the report of the Select Committee and make this motion at the same time, the report having been in the hands of the members for the prescribed period. When Mr. Beaufort introduced the Bill he explained its object, and he told us that the Government had for some years been trying to get some sort of statistics of births and deaths for the whole of the great province of Bengal, but the result had not been satisfactory. In the last report received it was made out that the annual death-rate in a large district was only one per mille; or, in other words, that every one there lived for a thousand years. That could not be considered a valuable result of the registration of deaths, and the Government had recently decided that as the Government and the people were constituted in Bengal, it was hopeless to try to get statistics of life and death over the whole of the great districts of Bengal; and accordingly it was determined that one town and one rural area should be taken in each district and an attempt should be made to get some sort of reliable statistics of death, and perhaps also of births. This plan came into operation in several districts on the 1st of January, and as far as we had gone each selected area comprised about 25,000 souls. If we could get anything like reliable statistics of these areas, we should be able to calculate what was the death-rate in the whole country, to ascertain what diseases were most destructive to life, and against what causes of death the Government might hope successfully to contend. When the registration was begun, it was found that the people of Bengal, who were a law-abiding people (some said they were a law-loving people), would not always give information of deaths. It was therefore proposed to bring in a Bill the provisions of which were borrowed from the Calcutta Act which had been some years in operation, the provisions of the Calcutta Act itself being taken

from the English law with certain modifications to suit the circumstances of the country. All this had been explained by the hon'ble member who introduced the Bill. The Council referred the Bill to a Select Committee, who had considered it and proposed only a few changes. Most of the amendments were in the direction of lightening the penalties and requirements of the Bill as it originally stood.

There were, however, a few points to which MR. BERNARD would ask the attention of the Council. Section 2 provided for the registration of births or deaths, or of births and deaths. This was proposed because it was most important to get the death-rate; and if we could get an account of births as well, it would be an advantage. In out-of-the-way places we proposed to register deaths only. In many parts of India when any body died it was customary to make some sort of report of the circumstance to the nearest chowkidar or policeman; people seemed to feel that by making such a report they relieved themselves of responsibility. But so far as he knew, it was not the custom thus to report births. As, however, it would be very much easier for the people to give information where Registrars were appointed, we would endeavour to obtain a registry of births also where it was practicable to do so; and in the course of time we hoped to get a tolerably perfect registration of births and deaths. Section 3 provided that every Registrar should have an office in his district for the registration of births or deaths, or of births and deaths, as the case might be, and give notice of the hours of the day at which he would attend for the purposes of registration. In rural areas this provision would perhaps not be of much value, but in towns it would be advantageous that there should be a well-known place at which reports of births and deaths would be received. Section 6 was a section in which the Committee had made an alteration. As it stood the chowkidar, or the village watchman of each village, was bound to get written information of each death or birth from every body who could write. There were a great many villages where it would not be possible to get information in writing: therefore we proposed that the chowkidar should get the information in writing if possible; or if it was impossible to get the information in writing, that he should get it verbally, and when he went into town to make his weekly or bi-weekly report he would give an account of the deaths that had occurred within his beat. Section 7 imposed certain duties on parents and others to report deaths. The Committee had reduced the maximum of fine, so that in no case could a fine of more than five rupees be imposed; and there was another provision, which originally stood in the Bill, that not more than one person should be punishable for neglect or refusal to give information of any one occurrence. It was also provided that Municipal Commissioners might register births and deaths occurring within municipalities, and expend municipal money for the purpose of such registration. MR. BERNARD had omitted to mention that in section 6 it was provided that the chowkidar should make the report required; or if there was no chowkidar, the report should be made by such other person as the Magistrate might appoint. In towns and cities where there was no indigenous agency of this kind other than the regular police,

Municipal Commissioners were authorized to appoint Registrars. In Bengal the people were not always very ready to go to the police, and did not like the police to interfere in domestic matters. Therefore it was desirable that in certain cases the Magistrate should allow the report to be made to persons other than the police. In the Suburban Municipality, instead of the police procuring information and registering births and deaths, the bill collector of the Municipality and his subordinates had been appointed to register births and deaths.

The motion was agreed to.

THE HON'BLE MR. BERNARD said that at the suggestion of the hon'ble member on his right (Mr. Schalch), he would move that in Section 4 the words "and respecting such particulars" be inserted after the word "forms" in line 5.

HIS HONOR THE PRESIDENT observed that this report had been in the hands of the Council for ten days, and it was inconvenient that amendments should now be moved without notice. He would suggest that the amendment should be withdrawn unless it was considered necessary. The effect of introducing the amendment would be to necessitate the suspension of the rules before the Bill could be passed.

THE HON'BLE THE ACTING ADVOCATE-GENERAL said that he thought the word "forms" would cover the particulars of registry. The Lieutenant-Governor was to settle the form in which the registry of births and deaths was to be made, and that would include the particulars to be entered in the register.

The HON'BLE MR. SCHALCH observed that he had suggested the amendment because the section did not refer to the particulars of registration. But as the learned Advocate-General thought the words proposed were not necessary, the amendment might be withdrawn.

The amendment was then by leave withdrawn.

On the motion of MR. BERNARD the bill was then passed.

ADJOURNMENT OF THE COUNCIL.

HIS HONOR THE PRESIDENT said there being no business of importance necessary to bring before the Council at an early date, the Council would be adjourned for a few weeks until further notice. He at the same time wished to thank the members for the assistance which they had given, and he believed they would not be sorry for the respite which was now afforded. The Select Committee on the Emigration Bill would, he hoped, be kind enough to continue their labors. He thought they would be able, during the time the Council was not sitting, to give some attention to the matter, in order that they might gradually perfect and finish that which they had so well begun. He would direct that the Bill as now amended, with the existing law, should be published in pamphlet form and be available to those interested in the subject; and he hoped that after the Bill was fully and thoroughly considered by the Committee, with the aid of the suggestions which those interested might be good enough to make, the Council would be able to bring the matter to a conclusion.

Saturday, the 26th July 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble H. L. DAMPIER,
The Hon'ble V. H. SCHALCH,
The Hon'ble LORD ULICK BROWNE,
The Hon'ble C. E. BERNARD,
The Hon'ble MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble T. M. ROBINSON,
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR,
and
The Hon'ble BABOO DIGUMBER MITTER.

THE HON'BLE MR. BERNARD took the oath of allegiance, and the oath that he would faithfully fulfil the duties of his office.

EMIGRATION TO THE LABOR DISTRICTS.

THE HON'BLE THE ACTING ADVOCATE-GENERAL moved that the time prescribed for the presentation of the Report of the Select Committee on the Bill to amend the law relating to the emigration of laborers to the Districts of Assam, Cachar, and Sylhet, and to regulate contract labor and service, be extended for one month. He regretted to say that the Committee had not been able to complete their report. The Bill was in progress, the whole matter had been carefully revised, but it would require a little further time to complete the labors of the Committee. In addition to their labors on the Bill referred to them, there were other new matters which required consideration; and for the purpose of devoting their attention to those subjects, he asked for this further time.

HIS HONOR THE PRESIDENT said, before this motion was passed he wished to say one word in order to ask the Members of the Select Committee and the Council to give their serious consideration to a question radically affecting the Bill, which had been raised in a correspondence between the learned Advocate-General and himself. His Honor was very far from asserting that the proposition submitted by himself in a very rude and rough form was the right thing to do. But at the same time he might venture to say that the more he heard and the more he had seen of the opinions of those most competent to form an opinion, the more he was inclined to think that there was some thing in the proposition which he had submitted for the consideration of the Committee. He was very much impressed with the belief that it was not expedient in any manner to check emigration to districts where labor was scarce. In some parts of India the population was overcrowded, which led to considerable evils, unhealthiness, and disease: on the other hand, in other

parts of India, and notably in the Provinces of Assam and Cachar, there was a want of population, and it was the supply of population which would develop the growth of produce and the sanitary condition of the country, and produce wealth, health, and contentment in future generations. His own inclination was to say, "God forbid that we should do anything to check emigration to these districts; on the contrary, we should promote emigration to the utmost extent of our power." Well, that being so, it seemed to His Honor that if there were a question whether we had over-legislated in restriction of emigration, or whether, perhaps, not having over-legislated, matters had so far improved that in future the area and scope of legislation might be diminished, that was an important matter, and one which ought not to be lightly passed over. It appeared to His Honor that we ought not to pass a new Bill without fully considering a question of that kind. Although his own personal experience was comparatively small, looking to the replies that had been received from some of the most experienced men, something was to be said for the proposition that had been made. Hon'ble Members who had studied the replies received from merchants and planters interested in the subject, would see that a great deal had been said in favor of the proposition.

Then our position was this: Hon'ble Members in the Council, and he as head of the Government, were bound impartially to look to the interests of all the parties concerned,—to the interests of the natives of the country, to the interests of the planters and the enterprising Europeans developing the growth of the tea industry. But His Honor himself took this view, that the planters were persons who were very competent to take care of their own interests by their knowledge and their power of making themselves heard. The coolies, on the other hand, were not so competent: they were not competent to make themselves heard in this Council. We had heard the views of the planters, but had not had an opportunity of hearing the views of the coolies. As head of the Government and President of this Council, His Honor was, he felt, particularly charged with the duty of looking after the interests of the cooly. Looking, then, to the interests of the cooly as well as to those of the planter, he thought it might be a question whether in the interests of both parties a proposition for a great relaxation of these restrictive laws might not be worthy of consideration. While we had done a great deal to protect the cooly in regard to recruiting, the voyage, and other matters; while we had imposed restrictions on the planters; whilst we had protected the cooly from harm in various ways, we had also imposed on the coolies serving under contract in the tea districts penal laws of extreme stringency—to such a point, that the cooly who was conveyed to the labor districts under those laws, became legally and practically a slave: he was for three years legally and indisputably a slave. His Honor did not use the word in a bad sense. The cooly was compelled to labor to the end of his term as a man not free and his own master, and in that sense was a slave. It was true that he generally did serve under a good and reasonable master, but he was not free. He was bound down for three years, not only by the terms of his contract and by penal laws, but by physical subjection to his master, who, on the cooly attempting to run away,

could seize him and bring him back to work. In a country where the tea plantations were in the midst of jungles, that was an enormous power given to planters over laborers—a power which had sometimes been abused, though not in the great majority of cases. It was a power which, speaking technically, reduced the cooly to the position of a slave. Moreover, under the existing law, if the cooly contracted again in any shape, he again came under the penal laws and became a slave. His Honor must say for himself that he held that above all things the blessings of freedom were great blessings. He much disliked this system of bondage. He was very much inclined to doubt whether the advantages the cooly gained were not more than counterbalanced by the penal laws by which he was subject to this bondage. It appeared, then, to him to be particularly in the interest of the cooly that a modification and diminution of those restrictive laws were suggested. If he was in any degree right that a mitigation of the law would be advantageous for the cooly, he was met by the planters, who were the best judges of their own interests, and who had experience to guide them. A large number of these planters did think that in their interests and in the interests of the coolies it was right to diminish the restrictions now imposed by law. We had not had time to receive replies from many Assam planters, but we had received many from Cachar. Looking to the replies received from Cachar, His Honor believed that the move in the direction of freedom was accepted by the planters as a move in the right direction. As far as Cachar was concerned, he was much inclined to think that we might do away with the restrictive provisions. Although the proposition submitted by him was his personal suggestion, it had now taken a phase which rendered it, he ventured to say, worthy of the attention of the Select Committee and the Council. He had expressed his views in a temperate manner; he had not pledged his mind to those views; he was prepared to alter them if on the whole there seemed reason for doing so; and he felt confident that his colleagues who had begun with the other opinion would also take a similar course. He hoped that this question would be thoroughly discussed before we came to a final conclusion on the Bill. He trusted it might be a conclusion which would be satisfactory to all parties.

The motion was then agreed to.

HOWRAH LIGHTING-RATE.

THE HON'BLE MR. DAMPIER said, when he had the honor of presenting to the Council the report of the Select Committee on the Bill for providing for the further lighting of the town of Howrah, the Council determined that it should be published, and that time should be given to those concerned to make any representations they might think proper; since that date but one petition had been received from the Howrah Peoples' Association, and that body expressed itself to be generally satisfied with the report and with the way the Bill had been laid before the Council by the Select Committee. There was, however, a memorial which had previously reached His Honor the President,

but which had not yet been discussed by the Council, and as that memorial went the length of objecting to the Bill altogether and praying for its withdrawal, it would be necessary for him to examine such parts of the memorial as concerned the business with which the Council had to do. There was a great deal in this memorial which did not affect the business of this Council, and with which therefore he should not take up the time of Hon'ble Members. The Executive Government would no doubt profit by the suggestions made and the care given by the memorialists to looking into the administration of the municipal affairs of Howrah generally, and would pass such orders as might be necessary.

To clear the way, it would be well to state the legal position in which the Bill now existed. As the law stood, the Municipal Commissioners of Howrah, if they could get the sanction of the Lieutenant-Governor, might light every part of their town with gas; they might devote to the expenses of such lighting every pice of the general rate which could be levied; or they might light half the town with gas and leave the other half uncared for. But, whatever else they might do, they were obliged to make every rate-payer in the town contribute proportionably to the expense of lighting by gas, whether he benefited by such lighting or not. It would hardly be argued that that was a satisfactory state of law. The object of the Bill was to provide a remedy, and in considering its provisions it would be well to divide them into two parts—*first*, those affecting the portion of the town already lighted with gas; and *secondly*, those which related to future possible extensions under the powers proposed to be given. Mr. Dampier would begin by accepting the statement of the memorialists in paragraph 2 of the memorial, that the primary object of the Bill was "to find money for the existing contract between the Municipality and the Oriental Gas Company." Paragraph 3 went into the merits of the contract, but that was one of the points which did not touch the business before the Council. The contract had been made; that was a fact with which the Bill had to deal. No modification of the terms of the Bill, not even its withdrawal, could cancel the contract; money must be found to meet it; it must be found for the next fifteen years; and the only question was, What was the most equitable mode of finding the money?

Again, Mr. Dampier accepted the statement of the memorialists in paragraphs 12 and 13—

"The gaslight, your memorialists submit respectfully, has been introduced chiefly in those parts of the town where there are Government or Railway buildings, or which are inhabited by European residents. * * * * * * The gaslight is admittedly a luxury, and it cannot be just or equitable that the bulk of the rate-payers, who, as shown above, are poor, should be taxed for the convenience and advantage of a few rich persons."

Now, the object of the Bill was to provide the remedy indicated in that very statement. In the 13th paragraph the memorialists went on to ask—

"If the principle of selecting a few tracts for gaslights be recognized in practice, it may well be argued why it should not be applied to other works of the Municipality."

To this it would be sufficient to reply that the Council were now trying to remedy one ascertained existing defect, and not to lay down general principles for municipal taxation and legislation.

There was one other passage in the memorial which he could also accept for the purpose of this present discussion:—

"Notwithstanding the high rate of taxation prevalent in Howrah, the primary wants of the town are, it is notorious, not attended to."

And then the memorialists went on to say that the roads were not metalled, they were not watered, and no conservancy carts found their way to certain parts of the town, and so on. Admitting that statement to be a correct representation of the state of things, he would reply that the immediate effect of the Bill would be to apply, at any rate, a partial remedy. Whether the proceeds of the rate proposed would be Rs. 9,000, as estimated by the memorialists, or Rs. 14,000, as estimated by the Magistrate and the Municipal Commissioners, to that extent the general funds of the Municipality would be set free as soon as this Act took effect, and the money would be available towards the metalling of roads, the lighting with oil, and satisfying the primary wants of the town, which, the memorialists said, were not now satisfied.

In paragraph 14 there was the objection that the Municipal Commissioners might—

"give one light at one end of a street and include the whole of it within the area of taxation. The Bill does not prescribe the distance within which lamps are to be posted, and it will be therefore entirely at the discretion of the Commissioners to vary the intervals."

The memorialists objected to a discretion being left to the Commissioners. The Select Committee had met that objection. As the Bill was introduced, it was open to the criticism that the Commissioners might light one end of one street and tax the whole town for lighting that particular spot. But the Bill, as now before the Council, imposed the most stringent restrictions which the Select Committee could devise in that direction. The Commissioners must first define the area they were going to light, they must then make a scheme for lighting that area, and then as the scheme was (according to the amendment he proposed to move) to be ventilated and published in the *Gazette*, those concerned would be able to propose alterations or object to the scheme altogether. Therefore, he said, the Select Committee had met the objection taken in paragraph 14 of the memorial.

In paragraph 6 the memorialists represented that—

"It cannot be reasonable or just that 97,000 native inhabitants should be subjected to an oppressive system of taxation, far beyond their means, for the sake of 200 Europeans, many of whom are also not permanent residents of the town, constantly floating about from the nature of their service under the Railway Company."

As to the portion of the Municipality already lighted with gas, the memorialists themselves said that gas-lighting had been applied to that part of the town where there were Government and railway buildings or which was inhabited by European residents, and the Magistrate had reported that

the Railway Company paid no less than one-fifth of the whole taxation of house and land property in Howrah, so that for this portion at any rate the bulk of the rate-payers would not suffer much.

And this brought him to the second head under which he had proposed to consider the provisions of the Bill—the possible future extension of gas-lighting under its operation. It was not in any way the object of the Bill to throw a lighting tax or to impose gas-lighting on the 97,000 persons referred to by the memorialists. It is true that in the statement of objects and reasons presented when the Bill was introduced, it was said that the intention of the Municipal Commissioners was to extend the benefit of lighting to the whole town. But the Select Committee had given up that object altogether. If Municipal Commissioners expressed any such wish and came up to the Lieutenant-Governor with any such proposal, Mr. Dampier hoped and felt sure that His Honor would promptly negative it. Any such wholesale extension would obviously be unadvisable and unwise.

The only postulates on which the Bill was founded were, that a certain portion of the Municipality was already lighted with gas; that in the course of things it was not unreasonable to suppose that lighting by gas might properly be extended to some other portions of the Municipality; that such lighting would generally be confined to the richer portions of the town; and that the expense of this luxury of lighting by gas should fall on those who directly benefited by it, and not (as the law now required) on the whole body of rate-payers, irrespective of the distance at which they lived from the portions so lighted.

The memorialists had given many figures to prove their case; but Mr. Dampier thought it was unnecessary to go into them, because he quite admitted the position which those figures went to prove, that it would be absurd to extend lighting generally to the whole of Howrah. Mr. Dampier was anxious not to appear to put himself in a position of hostility towards the memorialists, many of whose statements he had been able to accept, and who were quite right in bringing their objections before the Council. But he must draw attention to the figures given at the end of paragraph 5. The memorialists there said that the population was 97,784, and the taxes on houses, lands, and buildings, amounted to Rs. 1,21,816. On these figures they gave the incidence of taxation per head as Rs. 1-9. But if Hon'ble Members would go through the calculation, they would find that, taking the figures as given by the memorialists, the incidence of taxation came to something under Rs. 1-4 per head, and not Rs. 1-9 as given by them. It might be assumed that this first and most important item, relating to Howrah itself, had received at least as much care and attention at the hands of the memorialists as any of the other figures in their statements, and as that was so inaccurate, Mr. Dampier did not think that he would be justified in taking up the time of the Council by entering further upon the figures given in the memorial. He must protest, on behalf of the Council, against statements which would not bear the test of addition and division being laid before them as facts which should guide their decision. But the matter was not of much consequence,

because he admitted the general proposition of the memorialists, that it would be a hardship to impose a tax for gas-lighting on the whole body of rate-payers. Then, the memorialists made an objection referring to some sort of expectation having been held out that no such rates would be imposed, but that was an objection which Mr. Dampier would leave to His Honor the President to deal with.

And now, having explained the object and effect of the Bill as far as it lay in his power to do, he would only ask those hon'ble members who were inclined to view the Bill generally with disfavor, to consider that it might very well be entitled " A Bill to prevent the extra cost of lighting by gas being thrown on persons who did not benefit by such lighting;" and if the Council would look on the Bill in that light, he hoped they would be satisfied that it was reasonable and proper.

With these remarks he moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE said, before the Council proceeded to take into consideration the clauses of the Bill, he wished to offer a few remarks. It appeared to him that the inhabitants of Howrah took objection to the Bill on two grounds. They stated that an expensive system of drainage works had been introduced which had caused a considerable portion of the general funds to be applied to that purpose, and that the general management of the funds had not been so economical as it might have been, so that there had been more money expended than was necessary. And from that they argued, that if the Municipality were more carefully managed and the expensive system of drainage not persisted in, there would be no necessity for imposing an additional lighting-rate. The Magistrate of Howrah had answered some of the objections of the memorialists. But since coming to the Council this morning Rajah Joteendro Mohun Tagore had learned that these rate-payers had sent an application to the Council praying that they might be allowed time before the Bill was taken into consideration to enable them to reply to the objections and criticisms made by the Magistrate of Howrah in regard to their memorial. It appeared to Rajah Joteendro Mohun Tagore, that as the Government had been pleased to call on the inhabitants of Howrah to submit an expression of their opinion, it was but fair to allow them an opportunity of offering any remarks they might wish to make on Mr. D'Oyly's letter. Entertaining that view, Rajah Joteendro Mohun Tagore would submit to the Council whether it would not be desirable to allow the memorialists time to send in their representation before proceeding to the consideration of the Bill.

THE HON'BLE BABOO DIGUMBER MITTER said he would support the amendment if there was no valid objection to its being put, so as to enable the memorialists to make any reply to the Magistrate's letter that they might consider necessary—to give them, in fact, the satisfaction of being heard in reply to Mr. D'Oyly's letter, even if no good was likely to come of it.

His Honor the President said, he would say one or two words on the question before putting the motion. It seemed to him very clear on the face of the petitions before the Council that all parties were agreed that we must have *a* Bill on this subject. The Hon'ble Member who brought forward the Bill, and the Hon'ble Member now in charge of the Bill, and the Committee, considered that, in order to obtain a settlement of this question of gas-lighting expenditure, *a* Bill was necessary. Those who petitioned against the Bill, petitioned on the ground that it would not be fair to burden the whole of the inhabitants with the burden of gas-lighting, but only that portion of the inhabitants who would benefit by such lighting. That was precisely the main object of the Bill before the Council. All agreed that this tax of paying for gas-lighting should not be extended to the whole Municipality, and that was exactly the primary object of the Bill. Therefore he might assume that we were all agreed that there must be some Bill. We were irretrievably committed to lighting a certain portion of Howrah with gas. It was so lighted; a contract had been made which the Municipality could not get out of; funds must be found; and the only question was whether the Municipality at large should find the money or only a limited portion of it. So far we were all agreed.

Then, as to the power to extend further the lighting by gas. The Hon'ble Member in charge of the Bill had told us there might be some mistake in the statement of objects and reasons. He declared for himself, and His Honor might say for himself, that the object was not to light all Howrah with gas contrary to the wishes of the people, but to limit the area of such lighting and of the taxation consequent: that was to say, that the benefit of gas-lighting should be conferred only on those of the inhabitants of Howrah who of their own free will, and not from any pressure from the Government, desired to have the benefit of such lighting. If the inhabitants of any part of the Municipality should desire to extend gas-lighting to that part of the Municipality, the Bill gave power to extend lighting to that portion only, and they should pay for it themselves. So far there was not, he apprehended, any objection to the Bill. His Honor believed that that principle of extension was agreed to by the people. There could be no extension of gas-lighting except by the voice of the people who would be taxed. And there was a further check provided by the Bill on the part of the Government which His Honor pledged himself, so long as he should have the honor of being at the head of the Government, should be carefully exercised. This part of the Bill was then, he thought, sufficiently stringent.

The only other view that it was possible to take of the Bill was this, that it might be said that the present rate of municipal taxation, if taken at its maximum, was more than enough to cover the ordinary expenditure, and that we ought to take the expenditure on account of gas-lighting in diminution of the ordinary taxation. It was said that, allowing that there should be a special tax on account of gas, what you took for ordinary purposes should be diminished by so much. It might be that drainage was a bad thing. His Honor thought it a

good thing. It might be that there were extravagances on the part of the Municipality. It might be that the present maximum of taxation was too high; but that was a suggestion which he thought would not hold water. He found by the figures given by the Magistrate that it was made clear that the total incidence of taxation in Howrah was Rs. 1-2-2 per head, and not Rs. 1-9, as stated in the memorial. In His Honor's view that was not an exorbitant rate of taxation. When we considered that Howrah was no rural Municipality—that a great part of Howrah was metropolitan—that a great part of the population was European—that Howrah was in fact a European town—that it was in fact a portion of the metropolis of India; when we considered that the taxation of Calcutta was some 5, 6, or 7 rupees per head of the population; when we considered that the taxation of the comparatively poor and rural town of Burdwan was greater than that of Howrah, he would not admit that the incidence of taxation in Howrah was too severe. And considering that the drainage of Howrah was a pressing necessity, and Howrah was now being connected with Calcutta by a bridge, it would require new plans of improvement. You could not carry out the ordinary conservancy, repairs of roads, drainage, and everything, out of the ordinary taxation if it were put at too low a rate. For these reasons His Honor was convinced that it was necessary to impose a tax for gas-lighting in addition, and not in substitution, of the ordinary taxation.

The Hon'ble Member in charge of the Bill had said that he would leave His Honor to deal with the representation of the memorialists that there had been a pledge given by the Government of India that there should be no more fresh taxation. On that point all he had to say was that he had addressed the Government of India on that point, and had received an answer which had been communicated to the memorialists. He never supposed that the pledge amounted to this, that persons should not be allowed to tax themselves for a specific advantage for their own benefit. The Government had given the answer that it did not apply to this case, and that was all the explanation His Honor had to give.

Then the Hon'ble Member who had proposed a postponement, said that it was required to enable the memorialists to consider what reply they could give to the observations of the Magistrate. If ever there was a Bill in respect of which ample time had been given for consideration, it was this Bill. It had been nearly three months before the public since the presentation of the Select Committee's report. It had been postponed in order that there might be a free and full expression of the opinion of the people who would be affected by its provisions; and full advantage had been taken of the opportunity afforded. The people had interested themselves in the matter, and he would express his satisfaction that an active interest had been taken by the inhabitants. We should not have wished to offer any opposition to a postponement, but that a great deal of time had already been given to those who were interested in their own affairs. They had considered their own affairs and placed their views before the Council. It might be said that they had not had the opportunity of putting in a final answer to the statements submitted by the Magistrate. On that point

he would ask Hon'ble Members to remember that certain amendments were about to be proposed, and in accordance with the rules of the Council the Bill, if amended, could not be passed at this sitting, and consequently it would be necessary to postpone the consideration and passing of the Bill to another meeting. That being so, it appeared to him that there was no sufficient reason to delay the consideration of the Bill at this stage. To postpone the business now would render our meeting abortive and useless. If there was anything which the petitioners wished to controvert, they would have an opportunity of controverting it before the Bill was finally passed into law.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE said, with due deference to the Hon'ble the President, he would take leave to draw the attention of the Council to the 16th paragraph of the memorial. It was true the memorialists had accepted the position that the contract having been entered into, must be adhered to; but they had urged that if an expensive system of drainage had not been undertaken and the municipal funds had been more economically managed, there would have been no necessity for the Bill; and they showed that in the budget statement of receipts and disbursements for 1873-74 the amount to be realized would be enough to cover the expenses of the year, including a provision for Rs. 22,000 on account of gas-lighting (which was more by two thousand rupees than the amount of the original contract). And there would consequently be no necessity for additional taxation unless the expensive system of drainage already commenced were to be carried out with the present funds. He did not for a moment say that an efficient system of drainage suited to the means of the Municipality should not be undertaken; but if the general funds of the Municipality should not be sufficient to meet that purpose, it would be necessary to ask the Council to impose a tax for drainage, and not for lighting. It would be for the Municipal Commissioners to come up and ask the Government with a suitable scheme, and for the Government to consider whether an additional tax should be imposed for drainage, or whether by more careful management sufficient funds could not be found for the purpose. He spoke on the assumption that the figures given by the memorialists were correct. That being the case, he thought it would be fair to give the memorialists another opportunity of explaining themselves further as to their objections.

THE HON'BLE MR. DAMPIER said, he had hoped to avoid any discussion of these statements of the memorialists and the replies of the Magistrate, because, as he had said before, he did not think they affected the matter which he had now the honor of laying before the Council. There was this money to be paid; there was the area lighted. Did the Hon'ble Member who moved the amendment insist that the payment for this lighting should fall on the whole of the tax-payers of Howrah, and not only on those who benefited? That was what the memorial led to. The contract, it said, no doubt must be observed; but it seemed to say, we object to the expedient provided by the Bill for throwing the cost of the lighting on those who benefit, to the relief of the general rate-payers. Surely it was proper to throw the burden, or most of it, on those

who benefited, and with the Rs. 9,000 or Rs. 16,000 of the general fund which would be thus set free the Municipality could do what they liked. It was for the Commissioners to deal with the money thus set free; they might either reduce the general taxation by that amount, or apply it to drainage purposes or oil-lighting or anything else. All he said was that the burden of raising the money which was devoted to lighting purposes should be thrown on those who benefited by it. It was quite open to the Commissioners, in the interests of the people, to say either that they would expend the money thus made available on the general objects of the Municipality, or that they would strike off the amount from the general taxation.

As he should propose the amendment of which he had given notice, the Bill could not be passed that day, and before it could come up again, the memorialists would be able to make any further representations. But it would be a mere waste of time now to postpone the consideration of the Bill in order (as suggested by the hon'ble mover of the amendment,) merely to give the memorialists the satisfaction of controverting the statements made by the Magistrate of Howrah, most of which really did not affect the questions with which the Council had to deal.

THE HON'BLE BABOO DIGUMBER MITTER said, that what his hon'ble friend (Rajah Joteendro Mohun Tagore) really meant appeared to him to be that the lighting-rate for all practical purposes being in addition, and not in reduction, of the maximum rate hitherto levied by the Municipality, it would afford no relief to the majority of the rate-payers. In all probability the maximum rate would be still continued, and what had been hitherto expended from the general funds towards lighting a certain part of the town of Howrah, would now be devoted to carrying out the drainage works commenced upon in the same quarter, in the benefits of which such outlying places as Sibpore, Bellore, and others of which the Municipality is composed, could not participate, and which it was not likely would ever be extended to them. To afford real relief, the hon'ble member thought there should be a drainage rate, leviable upon the principle of the lighting rate, from those only who would benefit by those works.

HIS HONOR THE PRESIDENT said, it would be time enough, when such an amendment was proposed, to consider whether the amendment the hon'ble member suggested was a fit subject of amendment in this Bill, or whether another Bill on the subject should be introduced. The hon'ble member who had last spoken (Baboo Digumber Mitter) was clearly in favor of such a Bill as that now before the Council: therefore he would probably not oppose the motion for the consideration of the report of the Select Committee, in order that it might be passed as it stood or as it might be amended.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE then moved that the consideration of the Bill be postponed for a fortnight.

The amendment was negatived and the original motion was then agreed to.

THE HON'BLE MR. DAMPIER said, the amendments of which he had given notice appeared rather formidable, but if hon'ble members would examine them they would see that Section 2 as it stood before was one long section divided

into three paragraphs. The necessity of altering it arose from a suggestion made by the Howrah Peoples' Association, who said they were satisfied with the restrictive power given to the Lieutenant-Governor, but that they should like to have the scheme for lighting published in the *Gazette* at the time it was laid before the Lieutenant-Governor, so that people should have the opportunity of making remarks and objections. He thought that a reasonable suggestion, and therefore he had made provision for it in the amendment. That was the only substantial change that was proposed, the rest was a mere re-casting of the form and wording of the sections. He moved that Sections 2 and 3 of the Bill be omitted, and the following sections, numbered 2, 3, 4, and 5, be substituted for them :—

Municipal Commissioners may submit to the Lieutenant-Governor a scheme for lighting.

"2. It shall be lawful for the Municipal Commissioners from time to time to submit to the Lieutenant-Governor, for his sanction, a scheme for lighting or for continuing to light with gas any portion of the town of Howrah, such portion of the said town having been previously defined by the Municipal Commissioners at a meeting held for that purpose. The Lieutenant-Governor, after publication of the scheme for one month in the *Calcutta Gazette*, and after consideration of any objections which may be raised to it, or alterations suggested in it, may, if satisfied that proper provision has been made for the lighting, sanction such scheme; or may refuse his sanction to such scheme, or may return it to the Municipal Commissioners for alteration in certain particulars to be specified by him, and, when altered, may sanction it as altered. The Lieutenant-Governor shall cause his sanction to any scheme to be notified in the *Calcutta Gazette*, and shall at the same time cause the scheme sanctioned to be published in the said *Gazette*.

Lighting-rate not exceeding two per centum may, after sanction of scheme, be imposed on houses, buildings, and lands.

3. After notification by the Lieutenant-Governor as in the last preceding section mentioned, it shall be lawful for the Municipal Commissioners to impose an annual rate not exceeding two per centum of their annual value upon all houses, buildings, and lands situated within such portion of the said town, for the purpose of defraying the whole or part of the expense of lighting.

After rate imposed, lamps must be lighted.

4. So soon as a rate has been imposed under the last preceding section, the Municipal Commissioners shall immediately thereupon cause such portion of the said town to be lighted with gas according to the scheme sanctioned by the Lieutenant-Governor.

Rate payable by occupiers quarterly in advance.

5. The rate imposed under Section 3 upon houses, buildings, and lands, shall be paid by the occupiers thereof by quarterly instalments in advance; but no rate shall be leviable until the lamps in the portion of the town to be lighted shall have been lighted, nor shall any rate be leviable for any quarter or portion of a quarter antecedent to such lighting.

Arable lands, &c., exempted from rate.

Arable lands and lands used for pasturage, and buildings used exclusively as places of public worship or applied solely to charitable purposes, shall not be liable to the rate."

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE moved that in line 12 of the proposed Section 2, after the words "Calcutta Gazette," the words "and by notification in the vernacular posted in conspicuous places within the said town of Howrah," be inserted. Very few of the inhabitants of Howrah would have the opportunity of seeing the *Gazette*, and it would be desirable that the inhabitants generally should have the opportunity of knowing what the scheme was.

With regard to Section 3, he did not quite understand what the latter portion of it meant. If it was intended that the rate was to defray only a part of the cost of lighting, and that the rest was to come from the general funds, that would nullify the effect of the provision that no portion of the expense of lighting should be defrayed from the general fund, so that those only should pay who would benefit by the introduction of gas.

This, he understood, was the chief recommendation of the Bill; but with such a provision it would be practically set at naught.

THE HON'BLE MR. DAMPIER said that he admitted that the Bill was open to the objection that it contained this theoretical defect. But the provision in question was absolutely unavoidable unless hon'ble members were prepared to screw up the proposed rate to whatever might be necessary to meet the whole cost of lighting. In the part of Howrah already lit with gas a rate of 2 per cent. would not cover the contract by which the Municipal Commissioners were bound for the next fifteen years, and there would be some Rs. 4,000 or more to be met from the general fund. That undeniably was a defect in the Bill. If the hon'ble member would propose a higher rate being fixed, for the sake of adhering to the principle that those who benefited should pay the cost of the lighting, the Council would doubtless be prepared to consider it; but the suggestion appeared to meet with no favor when he himself threw it out for consideration on the last occasion when the Bill was before the Council. The Magistrate had explained distinctly that for certain reasons not specified this contract was entered into at a higher cost than the Calcutta contract, and that in any future extensions that might be made, it was expected that the contract would be obtained on better terms, and that a 2 per cent. rate would be ample to cover the whole cost. As the case of the area already lighted was peculiar and exceptional, he would himself oppose any amendment of which the object was to give the Municipal Commissioners and executive Government the power of imposing a 3 per cent. rate generally for lighting, merely for the sake of saving the principle as regards this one isolated case.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE observed, that if he understood the matter rightly, he supposed the relief to be given was a prospective one, and was to be postponed for the next fifteen years. In that case the whole principle of the Bill was open to question, and the ground upon which the Bill was introduced seemed to have been completely altered.

HIS HONOR THE PRESIDENT said, as he understood the matter, it appeared to him that the rate-payers who did not benefit from the lighting, but at present paid for it, would be relieved to the extent of the rate, and the residuum would remain a burden on the general rate-payers. The hon'ble member in charge of the Bill was quite correct when he said that this could only be remedied by proposing an amendment raising the special lighting-rate to a higher point than the present Bill proposed.

The question that Sections 2 and 3 of the Bill be omitted, was agreed to:

The new Section 2 with the proposed amendment thereto was then agreed to.

The proposed Section 3 having been read—

THE HON'BLE BABOO DIGUMBER MITTER moved that in line 7 the words "three per cent." be substituted for "two per cent." He said the object of the amendment was to fully assert the principle on which the Bill was based, that those only should contribute towards the cost of lighting by gas who benefited by it. And as it appeared that a rate of two per cent. would not meet the present charge of the contract entered into with the Gas Company, he would propose, rather than the principle of the Bill should be sacrificed, that a rate of three per cent. should be levied.

THE HON'BLE THE ACTING ADVOCATE-GENERAL said, it appeared to him that the amendment now proposed would introduce a radical change. He thought all persons concerned should have had information of such a proposal, and that three per cent. should have been inserted in the draft of the Bill. The proposal seemed to him not to come within the scope of an amendment so suddenly put in Council.

THE HON'BLE LORD ULICK BROWNE said, it seemed to him necessary, on the principle adopted, to raise the rate from two to three per cent. He understood that two per cent. would be insufficient to defray the entire cost of lighting, and Sections 3, 4, and 5, as proposed by the hon'ble member in charge of the Bill, provided that further portions of the Municipality might be continually added to the gas-lighted area. If the rate was insufficient to defray the whole charge of the lighting, the additional charge would be thrown on the general funds of the Municipality, and consequently become payable by the inhabitants of the whole town in proportion as additional portions of the town were lighted. Thus, supposing that the lighting of the first portion cost Rs. 10,000, and that the lighting-rate produced Rs. 7,000, then the inhabitants would have to pay out of the general fund Rs. 3,000. If another portion were added to the lighted area at the same expense, then another Rs. 3,000 would have to be paid out of the general fund; and in this way you would go on increasing the charge on the municipal general fund, and therefore imposing more and more expense on the inhabitants of the Municipality in general, whether the portion they lived in was lighted with gas or not.

THE HON'BLE MR. SCHALCH said, it appeared to him that two cases would fall under the provisions of Section 3—*first*, the case already arisen of the contract already made and which must be paid for; and *secondly*, new extensions for which no contracts had yet been made. As a rate of two per cent. would yield Rs. 14,000 in the portion of the Municipality already lighted with gas, whereas the contract cost was Rs. 20,000, it would leave a deficit of Rs. 6,000 to be borne by the general fund. But it was anticipated that a rate of two per cent., even in that portion of the Municipality which was now lighted, would cover the cost when the present contract expired. Therefore we might assume that a rate of two per cent. would cover the cost in future extensions. Therefore, according to the Magistrate's letter, a rate of more than two per cent. would not be required. Therefore, whilst we provided that a rate of two per cent. should be imposed to meet the cost of future extensions of lighting, we might put

in a proviso saying that the Commissioners might impose a rate of three per cent. in the portion of Howrah now lighted during the currency of the present contract.

His Honor the President said, he was somewhat unwilling to put to the Council so very radical a change without notice. It was a very radical change, and one which required very full and very careful consideration. But as he had already permitted the hon'ble member to make the motion, he thought he might take the opinion of the Council upon it, on the understanding that if this change was made time should be given to the Council and to the inhabitants of Howrah to digest that change, to review what was done, and to consider whether what had been done, had been done rashly and without sufficient deliberation. It was suggested, and in fact stated by the hon'ble member in charge of the Bill, that his view of the matter was this, that the present contract for lighting a portion of the town of Howrah was a somewhat extravagant contract, and that it was hoped that future contracts would be made on better and more favorable terms; that with regard to future contracts a rate of two per cent. would be sufficient. The present extravagant contract was made by the rate-payers at large through their representatives the Municipal Commissioners; the representatives of the Municipality, then, made this extravagant contract, of which, we were told, one-third was extravagant and two-thirds only afforded a *quid pro quo*. Therefore we might fairly say that on the special part of the town we would only impose a tax to the extent to which they had benefited, and not to the full extent to which the general body of the rate-payers had, through their representatives, committed themselves. Therefore, as the proposed amendment changed the essence of the Bill which had been so fully considered, His Honor was somewhat adverse to it. Perhaps the Council would leave the Bill where a careful Committee, after much deliberation, had put it. He would put the amendment, whether the rate should be 2 or 3 per cent. as a maximum, reserving for consideration future amendments in regulation or qualification of the 3 per cent. rate, if a rate of 3 per cent. were adopted by the Council at this sitting.

The question being put, the Council divided:—

Ayes 7.	Noes 3.
The Hon'ble Baboo Digumber Mitter.	The Hon'ble Moulvy Abdool Luteef.
" " Rajah Joteendro Mohun Tagore	" " Mr. Dampier.
" " Mr. Robinson.	His Honor the President.
" " Mr. Bernard.	
" " Lord Ulick Browne.	
" " Mr. Schalch.	
" " The Acting Advocate-General.	

The motion was therefore carried.

On the motion of the Hon'ble Baboo Digumber Mitter the words "or part" in the 10th and 11th lines of the section were then omitted.

The proposed Section 4 having been read—

His Honor the President said there appeared to him to be some difficulty in regard to this section. The section provided that—

"As soon as a rate has been imposed under the last preceding section, the Municipal Commissioners shall immediately thereupon cause such portion of the said town to be lighted with gas *according to the scheme sanctioned by the Lieutenant-Governor*."

Supposing it was found that the Municipality could not complete the scheme sanctioned by the Lieutenant-Governor for the money? He supposed that the Commissioners could not be called upon to perform an impossibility. We had frequently seen that schemes submitted by the most eminent engineers could not be carried out within the estimates framed. He proposed therefore to add to this section the words "or so far as the rate will permit."

THE HON'BLE THE ACTING ADVOCATE-GENERAL observed that the words proposed to be inserted seemed to him to be unnecessary. The scheme must be made according to the money to be expended.

HIS HONOR THE PRESIDENT remarked that the amendment he had proposed had reference to the question of the responsibility of the Lieutenant-Governor. The Lieutenant-Governor passed a scheme and called upon the Commissioners to carry it out. The Commissioners found that the scheme could not be completed within the estimate. That was the false position from which he wished to absolve both the Commissioners and the Lieutenant-Governor. The Lieutenant-Governor would be put in a very awkward position if he was to be bound to carry out a scheme whether it could be completed within the estimate submitted or not. We all knew that estimates were often deceptive. The Lieutenant-Governor was only human, and could not be sure of keeping engineers within compass.

THE HON'BLE MR. SCHALCH said that these works were carried out in two ways—they might either be carried out by contract, or departmentally. Under the latter system a scheme was submitted and an estimate framed according to the market rates of labor and materials. In the meantime prices might rise. It had been found in works carried on by the Port Commissioners that, preparatory to the completion of a contract, the rates had risen by nearly 30 per cent.; therefore there must be some provision made to meet such cases. If you did not, in consequence of its being impossible to carry out a scheme fully within the estimate—if you allowed a scheme to be carried out in part—you would have the objection raised that a light might only be put at one end of a street and a light at the other, and, notwithstanding that, the whole street might be liable to be taxed. He thought that a provision of the kind proposed was absolutely necessary.

THE HON'BLE MR. DAMPIER said, he must observe on behalf of the Select Committee that they had anticipated such a dilemma as now stopped the way of the Council, and had been careful to keep in the Bill a provision which would admit of some portion of the general funds being applied towards the cost of lighting, so as to meet such difficulties in working.

HIS HONOR THE PRESIDENT observed that he must distinctly say this, that the Lieutenant-Governor could not accept the responsibility of passing schemes on the assumption that they could be carried out strictly within the estimates.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE remarked that, with such latitude to the Commissioners, it would hardly be necessary to restrict them at all.

The section as proposed to be amended was then agreed to.

The proposed Section 5 was agreed to.

THE HON'BLE MR. DAMPIER said, the effect of the amendments carried by the hon'ble members, who might be said to represent the objecting rate-payers of Howrah, who strongly objected to this additional taxation, was to give the Municipal Commissioners and the executive Government authority to impose a tax of three per cent. instead of two. The amendment materially affected the character of the Bill, and he must now move that the Bill be referred back to the Select Committee to enable them to draft it as a homogeneous whole.

THE HON'BLE BABOO DIGUMBER MITTER said, if we were at all to carry out the principle on which this Bill was based, he did not see how we could else get out of the difficulty. The Magistrate of Howrah had said that a rate of two per cent. on the portion of the Municipality lighted by gas would only raise Rs. 14,000, and the sum we had to provide to meet the present cost of such lighting was Rs. 20,000. The only remedy therefore was to raise the rate to three per cent., unless we preferred to abandon the principle on which the whole Bill was based.

HIS HONOR THE PRESIDENT said, the question as to the rate of taxation had been decided, and the question now was, not whether the change that had been made was a radical change or not, but whether the change that had been made did not require that the minute provisions of the Bill should be looked into in order that they might be made to correspond and tally with the amendment. It was very important to see that all the provisions of the Bill fitted into the change.

The question that the Bill be referred again to the Select Committee with instructions to report in a week was then agreed to.

The Council was adjourned to Saturday, the 9th August 1873.

By order of the President the Council was further adjourned to Saturday, the 16th August 1873.

Saturday, the 16th August 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. L. DAMPIER,
The Hon'ble V. H. SCHALCH,
The Hon'ble LORD H. ULICK BROWNE,
The Hon'ble C. E. BERNARD,
The Hon'ble MOULVI ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR,
AND
The Hon'ble BABU DIGUMBER MITTER.

HOWRAH LIGHTING RATE.

THE HON'BLE MR. DAMPIER moved that the further report of the Select Committee on the Bill to provide for the levy of a lighting-rate in Howrah be

taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He said it would be in the recollection of hon'ble members that on the last occasion when the Bill was before the Council, it was remanded to the Select Committee for a definite object, which object had been adopted by the Council in opposition to the principle of the Bill as first presented by the Select Committee. Practically the instruction to the Select Committee was to frame the Bill so that no portion of the cost of lighting any given tract should fall on the general rates of the Howrah Municipality; that the benefited tract should pay entirely, and under all circumstances, the whole cost of its own lighting. And the Council having adopted that principle, raised the maximum of taxation to three per cent., so that no part of the cost might possibly devolve upon the general revenues. In framing the Bill in accordance with these instructions, the Select Committee found it absolutely necessary to separate the case of the tract in which lighting already existed and in regard to which, so to say, the Council was not free. It was bound by certain obligations which had been already incurred. It would not have been giving effect to the principle adopted by the Council if, for that tract which was already lighted, the Select Committee had fixed a maximum of three per cent. Whatever would be the cost of efficient lighting there, as approved by the Lieutenant-Governor, must, according to the principle adopted by the Council, be paid by the inhabitants of that particular tract. Therefore the Committee had separated that particular tract from the rest of the town by the proviso which the Council would see in the second part of Section 3, which imposed no maximum rate at all as to that part of the town which was already lighted.

Regarding the rest of the town to which, possibly, gas-lighting might be extended in future, the Committee had absolutely followed the instructions of the Council, which were to fix a maximum of three per cent. That was adopted in opposition to the Select Committee's former report as a whole.

There was only one more remark which Mr. Dampier would make. So much had been said of the poor population of Howrah, and the natives having to pay (an enormous number of them, some 97,000) for the benefit of a few Europeans, that he might as well give the Council the figures which had been supplied to him as to the effect of the Act within the tract already lighted. In that tract, he was informed, there were 3,200 houses occupied by natives, who, at two per cent., would have paid Rs. 4,200, or an average of about Re. 1-5 for each house. The houses occupied by Europeans numbered 281, and they would pay, at two per cent., Rs. 12,994, so that each native house would have got for Re. 1-5 precisely the same advantage of lighting as each European house would have by paying Rs. 46-2 or thereabouts. The same proportions would of course hold good at whatever amount the rate might be levied. He merely mentioned this to remove an impression which might have been left by the argument that 97,000 natives would suffer for the benefit of a few Europeans. He would now leave the motion in the hands of the Council.

The motion was agreed to.

THE HON'BLE BABOO DIGUMBER MITTER moved that in Section 3, line 7, the words "two per centum" be substituted for "three per centum." He must admit the soundness of the views which had dictated His Honor the President to oppose the amendment he moved at the last meeting of the Council proposing to fix the lighting-rate at three per cent. instead of two. As a general lighting-rate, there could be no question that three per cent. was extravagantly high for Howrah, when the Calcutta maximum rate was only two per cent. But he then thought that we had no other choice in the matter. The annual sum contracted for with the Gas Company must in the first instance be provided for, and that out of the proceeds of the rate levied within the gas area, which, according to the facts then before us, he found could not be done if the rate were fixed at two per cent. And rather than sacrifice the sound and righteous principle which for the purposes of this Bill we had laid down in Committee, and which had been unanimously agreed to by the Council, he proposed that the rate be raised to three per cent., the proceeds of which, he calculated, would just cover the required amount. We subsequently discovered, however, that the amount leviable according to the estimate furnished by the Chairman of the Howrah Municipality was contingent upon 36 more lights being added to the present number, to render the whole of the given gas area accessible to the rate, according to the conditions prescribed in the Bill. This would entail an additional charge of nearly Rs. 4,000, so that the total amount we had to provide for as the first charge on the lighting-rate was, in round numbers, Rs. 25,000, which even a rate of three per cent. would not cover. Again, if the Howrah memorialists were to be believed, each per cent. of the rate represented Rs. 4,500, and not Rs. 7,000 as the Chairman of the Municipality estimated. In this state of uncertainty the Select Committee thought that they had no other alternative left than to recommend the rather unusual course of leaving the determination of the rate to be levied within the gas area to the discretion of the Commissioners. The contract amount, however, being thus specially provided for, there was no longer any necessity for keeping the general lighting-rate at such an unreasonably high figure as three per cent. If a rate of two per cent. was found insufficient for the further extension of gas-lighting on the terms and conditions prescribed in the Bill, that of itself was a sufficient proof that the Municipality was not rich enough to afford the luxury, and must do without it.

THE HON'BLE MR. DAMPIER said that the position was rather curious. The hon'ble member who, at the previous debate, had forced up the rate from two to three per cent., now wished the Council to return to two per cent., and Mr. Dampier, who originally appeared as the advocate of two per cent., now appeared as the advocate of three per cent. He need not add that the inconsistency was on the surface only; both his hon'ble friend and Mr. Dampier himself had valid reasons for the course they had taken. The Bill had now taken a different shape, and there were new elements to be considered. Now, his reason for now advocating three per cent. was this. When there was a possibility of the cost of lighting any area overflowing, so to speak, the proceeds of the maximum rate to be levied under the Bill, he thought that it would

be proper that anything above the two per cent. should be contributed from the general rates. But now the Council had absolutely refused to allow any contribution to be made under any circumstances from the general rates; and therefore to fix a maximum of two per cent. would, as far as he could judge, be futile, and make the clause practically inoperative. As things went, he did not believe that for many years it would be possible to make any extension of gas-lighting in Howrah if a two per cent. rate was fixed as a maximum. It was not meant that there was to be any immediate extension, and that three per cent. was to be levied at once. But even if three per cent. were insufficient now, it might be expected that within a reasonable time the value of property in Howrah would have so far increased that the rate would be sufficient, at any rate in the more advanced portions of the town to which it would naturally be desirable first to extend gas-lighting. To limit the rate to two per cent. would be putting off any further extension *sine die*. For these reasons he would oppose the amendment.

The Hon'ble Rajah Jotendro Mohun Tagore said he would support the amendment which had been proposed. The circumstances under which, at the last sitting of the Council, a rate of three per cent. was proposed had, he thought, considerably changed. The rate, it would be remembered, was raised from two to three per cent. on the ground that a two per cent. rate would not be sufficient to meet the required amount which had been contracted for with the Gas Company. But now that the area which had been lighted had been, as it were, made into a separate tract, and a special provision for it had been introduced in the Bill, he did not see why an exceptionally high rate of three per cent.—a higher rate, in fact, than was levied in Calcutta,—was to be imposed in Howrah. If it was found hereafter, as it was feared, that a two per cent. rate was not sufficient for the purpose of lighting other portions of Howrah than that already lighted, it was much better, he thought, that there should be no extension of gas-light than that an exceptionally high rate should be imposed on the people for a benefit which they did not seem to appreciate For these reasons he would support the motion.

His Honor the President said that to him, as President of the Council, the course which the Bill had taken was somewhat a lesson, that from the first he should not permit amendments to be brought forward without due and sufficient notice, in order that both the Council and the mover of the amendment himself should first consider the effect of the amendment in all its bearings. We were now in a somewhat curious position, inasmuch as the hon'ble member who moved and carried an amendment increasing the rate from two to three per cent. had now moved that we should go back again to two per cent. His Honor understood the situation to be this. We were assured by the hon'ble member in charge of the Bill—and His Honor believed the hon'ble member had given good ground for his assurance—that in reality, as things now stood in Howrah, it was impossible to light any portion of the municipality by a rate not exceeding two per cent.; that, he believed, was a fact. On the other hand, we were met by the hon'ble mover of the amendment, supported by the Hon'ble

Rajah Joteendro Mohun Tagore, with the argument that if you could not light Howrah by a rate of two per cent., it was better not to light it at all. It seemed to His Honor that we were in this position: we must either pass a rate of three per cent., as recommended by the Select Committee, or we must indefinitely postpone the lighting of Howrah by gas beyond the portion already lighted. He understood the effect of the amendment would be this, that until the rest of Howrah was much richer and more populated than it was now—until a rate of two per cent. would produce a much larger sum than it would do now—the rest of Howrah could not be lighted with gas. The question then for the Council to decide was, would they give permission to the Municipality and the Government to light Howrah with gas by means of a rate not exceeding three per cent., or would they say that the town should not be lighted at all until it increased so much in wealth and population that a rate of two per cent. would be sufficient? His Honor must leave the Council to decide that question.

His Honor the President having asked whether the hon'ble mover of the amendment had any remarks to offer in reply—

The Hon'ble Baboo Digumber Mitter observed that His Honor had given a very correct analysis of what had been urged on either side, and Baboo Digumber Mitter had therefore nothing further to add to what he had already said in support of the amendment.

The question was then put, and the Council divided:—

Ayes 2	Noes 6.
The Hon'ble Baboo Digumber Mitter	The Hon'ble Moulvi Abdool Luteef
" " Rajah Joteendro Mohun Tagore	" " Mr Bernard
	" " Lord Ulick Browne
	" " Mr Dampier
	" " The Acting Advocate-General
	His Honor the President.

So the motion was negatived.

The Hon'ble Lord Ulick Browne said, before the Council left Section 3, there was one point on which he should like to have an explanation from the hon'ble member in charge of the Bill. The section, as altered by the Select Committee, made a distinction as regards the portion of the town now lighted and that portion which should be left hereafter to be lighted. As regards the portion already lighted, the section as it stood provided that—

"It shall be lawful for the Municipal Commissioners to impose a rate sufficient to defray the whole expense of lighting such portion."

And as regards the rest of the town, it shall only "be lawful to impose an annual rate not exceeding three per cent." Now, he had ascertained from the Magistrate of Howrah that under the contract with the Gas Company the Municipality were bound, in case they extended the area of gas-lighting, to deal with the same Gas Company, and to pay the same rate of Rs. 100 for each lamp lighted by gas, exclusive of the cost of maintaining the lamp-posts. That being so, if a rate of three per cent. was insufficient to pay for the cost of lighting the area now lighted, three per cent. would be insufficient to pay for lighting successive areas hereafter. He thought that was a point which required explanation as

regards the distinction made in the section between the parts of Howrah already lighted and the parts to be lighted hereafter.

THE HON'BLE MR. DAMPIER said, the answer to the question put by the hon'ble member was, that the fact of three per cent. being insufficient to pay the cost of lighting the present area, having a very limited number of lamps, was not in itself conclusive that three per cent. would be insufficient, even in view of the existing contract, to make extensions. For in order to light this first tract which now had the benefit of gas, it was necessary for the Gas Company to set up large works. He was given to understand that the Company had in the gas works made provision for lighting a number of lamps which would suffice for all parts of Howrah which were ever likely to be lighted. They were obliged so to fix the price of the few lamps first lighted that there might be some little return on the capital outlay of setting up these large gas works which eventually were to suffice for all demands. He was given to understand that the present profits of the Gas Company were very small indeed, and every extra lamp lighted would be an object to them. It was their interest to meet any proposal of the Municipality to extend the lighting by saying—"If you wish to extend the number of your lamps, although you are bound by your contract to come to us, and not bring in another company at a cheaper rate, still, as an inducement to you to extend your lighting, we will reduce the cost for each lamp as much as we can." That was the reason why, although a three per cent. rate was insufficient to pay for the cost of the portion already lighted, it would not necessarily be insufficient for future extensions.

The Hon'ble Mr. Dampier then moved that the Bill be passed

The motion was agreed to.

The Council was adjourned to a day of which notice would be given.

Saturday, the 6th September 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble V. H. SCHALCH,
The Hon'ble LORD ULICK BROWNE,
The Hon'ble C. E. BERNARD,
The Hon'ble MOULVIE ABDOOL LUTEEF, KHAN BAHADOOR,
The Hon'ble T. M. ROBINSON,
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR, and
The Hon'ble BABOO DIGUMBER MITTER.

EMIGRATION TO THE LABOR DISTRICTS.

THE ACTING ADVOCATE GENERAL said he had the honor to present to the Council two reports of the Select Committee on the Bill to amend the law relat-

ing to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract labor and service. The first report related to the Bill generally: the other was on a matter which subsequently came before the Committee, as to which they had thought it necessary to make a special report.

In presenting the first preliminary report of the Committee, he took occasion to say a few words on the general features and characteristics of the Bill. The principles then enunciated had been carried out by the Committee, and the labors of the Committee had been principally directed to the careful revision of the language of the Bill. The matter had been carefully summarised in the report; and he did not, therefore, deem it necessary to say much on the subject. He considered that the report spoke fully for itself as to what had been done. There were only one or two matters to which he wished to direct attention.

The Committee had altered the definition of "Magistrate." The word, as it stood in the Bill, included "a Magistrate of a district or division of a district, and any Magistrate of the first or second class, and any Magistrate deputed by the Magistrate of the district for the control of emigration or laborers, and any Magistrate of police for the town of Calcutta." The Subordinate Magistrate, who was capable of being appointed by the Magistrate, had very limited powers and functions; and we thought it therefore necessary to strike out from the definition the words "and any Magistrate deputed by the Magistrate of the district for the control of emigation or laborers."

The powers given to a Magistrate deputed by the Magistrate of the district were expressly defined in the Bill.

Then the Committee said—"We have omitted the provisions relating to evidence in Sections 28, 62, 63, 66, 106, and 133, and the references to the Penal Code in Sections 13, 103, 108, and 132." THE ADVOCATE-GENERAL would draw attention to this as one of great importance, and one which the Council should take into consideration when settling the clauses of the Bill. He might mention that one of these sections, Section 28, provided that an extract of every such contract should be entered in a register to be kept by the Magistrate, and a certified copy of such entry, or of the contract, should be forwarded to the Superintendent of Emigration, by whom it should be forwarded, after entry in his own register, to the Magistrate of the labor district within which the emigrant contracted to labor. The Section three proceeded to say—"Such certified copy of the entry or of the contract so forwarded shall be admissible in any Court as evidence of the contents of the contract." The Committee had been obliged to strike out this form of evidence, inasmuch as this Council had no power to define what should be evidence, or to add to or alter the rules of evidence. This Bill having repealed the existing emigration law, the Council had taken away from itself any power to provide that an entry or any special form of evidence should be evidence in a particular proceeding. The result was that every contract which might become the subject of controversy between laborer and employer would have to be proved in the ordinary way, namely, by the proof and production of the original, or, in the absence of the original, by the

proof or production of a copy. If it should be necessary to preserve this short form of proof, the present Act would have to be repealed with the exception of the particular portion which provided for the reception of this kind of evidence. If it should be deemed advisable to have a special form of evidence as a part of the law relating to emigration, we would have to repeal the former Act, excepting from the repeal the portions relating to evidence, inasmuch as the evidence Act had preserved all matters of evidence in reference to special and local Acts.

In the same way references to the Penal Code had been struck out, this Council having no power to add to or alter any of the provisions of the Code. For instance, in regard to Section 13, if a person was a public servant within the terms of the Penal Code, well and good; if not, this Council had no power to make him one.

There was one other matter to which THE ADVOCATE-GENERAL thought it necessary to refer: he alluded to the part of the report which was as follows:—"we have slightly altered the constitution of the Labor Transport Fund to meet the provisions of the Criminal Procedure Code, Section 308," whereby the Procedure Code enabled a Magistrate to award a portion of the fine to a complainant. The Bill as it stood devoted the whole of the fine to a particular purpose. We had made that provision subject to Section 308 of the Criminal Procedure Code.

He did not think it necessary to refer to this report further than to say that the Committee had introduced certain forms in the Schedule which they trusted would be considered satisfactory. A form of contract was provided in Schedule A, and the Council would see that it was a very short and simple form of contract,—quite sufficient, he thought, for the purposes of the Act. The form of contract hitherto in use comprised within it all the principal provisions of the law itself. The relative positions of employer and employed were defined in the Bill, and the introduction of such provisions into the contract did not make them more binding. They had, therefore, adopted this form of contract. It might be a question whether, under the instructions of Government, the Magistrate should not be directed to explain the general provisions and features of the Act to the emigrants before the signing of the contract. That, however, was a matter which the Executive Government would be able to govern and direct without the authority of the Legislature.

With regard to the supplementary report, the Council would observe that the Committee were of opinion that the systems of free recruiting and recruiting under the Act could not well work side by side. The Committee did not feel themselves able, on the materials before them, to recommend that Cachar or any other district should be exempted from the operation of the Act, or to make any specific recommendation to the Council on the general subject. He had carefully read the whole of the opinions received, and beyond the letter of the President, respecting the state of the Chandypore gardens, he had not met with any specific evidence. If the facts stated in that letter referring to Chandypore gardens could be extended by evidence to other estates, or if the evidence tended to show that the state of things at Chandypore existed

in other localities, then the Committee would have had sufficient material to make a specific recommendation; and if they had had such information, they would have been inclined to make a recommendation. But as the matter stood they had not had such evidence. No doubt a number of most valuable opinions had been received, but those who undertook the task of legislation were bound to form their own opinion, on good and sufficient evidence, and to have a firm groundwork as the basis of a sound and important measure. The Committee had had several meetings on the subject, and had devoted considerable time and attention to it, and the result was that they found themselves unable to make any specific recommendation.

On the other hand, the Council would observe that, if they should now be disposed to order a further inquiry specifically on the subject, the Committee would be perfectly ready to take into their consideration the results of such further inquiry. With regard to the opinions which had been received, THE ADVOCATE-GENERAL would make this observation, that the opinions were generally to the following effect—that free recruting was approved subject to the provisions regulating the due performance of contracts being preserved. No doubt if free recruiting were allowed subject to the condition that the portion of the law relating to specific performance of contracts should be preserved, such an arrangement would suit the employers very well. But he ventured to think that this Council would not accept the above recommendation, on the subject of recruiting, so fettered and encumbered.

On the other hand, with regard to the laborers employed, their view was wholly unrepresented. Whether it was capable of being represented he did not know, but he thought it was worth an attempt to get, as far as possible, the opinion of the laboring classes by means of inquiries instituted under the direction of Government by the Magistrates or other Government officials, or by means of a commission of investigation and inquiry.

When all these matters were put before the Council, they would be in a position to say whether or not they would exempt Cachar from the operation of the Act. THE ADVOCATE-GENERAL would protect the poor native in every possible way, and he thought that the provisions of the existing law afforded the laborer every necessary protection. But then it was said that if the time had arrived when the parties could deal with each other without any restrictive provisions, it was the duty of the Government to remove such provisions, and that the freedom which was to be enjoyed under the new state of things was highly desirable. He must confess that the partial restraint of freedom did not weigh very heavily with him when he found that such restraint was more than counterbalanced by positive advantages in respect of health, wages, and other matters contributing to the welfare of the employed. All persons who were bound to others in the capacity of servants had to submit to considerable restraint of their own actions and inclinations for several hours of the day.

On the whole he considered that the provisions of the law relating to emigration sustained a fair equilibrium between employer and employed.

His Honor the President said the motion of which there was notice was that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill in the form recommended by the Select Committee.

The Acting Advocate-General observed that the motion, as it stood in the list of business, came from His Honor the President, and had been inserted in the paper by the routine of the office. He did not think the Council were now in a position to consider the clauses of the Bill; the report of the Chamber of Commerce, for instance, had only lately been received, and had not been considered by the Select Committee.

His Honor the President said he thought it desirable that the Bill should be taken into consideration in the form recommended by the Committee, merely to give them a starting point for further proceedings, and he would therefore move that it be so considered.

In doing this he would take the opportunity to explain the course which the Government proposed to take with respect to this Bill. The Council were probably aware—those who read the newspapers must be aware—that it was rumoured, he could not say whether truly or not, that there was on the anvil a plan for separating from Bengal and attaching more closely to the Government of India the districts for which this Bill more particularly provided as labor districts. The Council were also aware that there was before the Legislative Council of the Governor-General a Bill somewhat cognate with this Bill: he alluded to the Bill to promote emigration to British Burmah. That being the state of the case, and he also being not aware whether the separation of these districts to the east of the Brahmapootra would or would not take place, the Government would not think it right that this Bill should be forced through the Council without communication with the Government of India. On the other hand, if in this Council, with the general consent of all parties, a good Bill of this kind could be settled and passed, a great advantage would be gained; because even if these districts were relieved from the control of this Council, on the other hand, the recruiting grounds would still remain subject to the jurisdiction of the Council. That being so, if the labor districts were separated from the recruiting districts before this Bill was passed, considerable difficulties might arise, and it would in many respects be a great advantage if, before any separation of this kind should take place, these questions should be settled amicably and as much as possible with general consent.

In His Honor's view it was the greatest possible object to promote emigration from the thickly populated—it might be over-populated—districts of Western Bengal to the thinly populated Eastern districts. What was wanted to render the Eastern districts productive and a source of prosperity to the people and the nation, was population. He was inclined to believe that the districts of Western Bengal, if not over-populated, were on the verge of being over-populated; and in the interests of all parties it was advisable that facilities for transport should be given, every means in the power of the Government being used to promote that end. He wished to promote emigration as much as

possible; he wished to promote free and voluntary emigration as far as might be; and as emigration could not be altogether spontaneous, he believed all interested in tea plantations and the welfare and prosperity of the Eastern districts would agree that above all things the great thing wanted was cheap recruiting, cheap transport, cheap means of providing a population in those labor districts. The Government would do all it could to promote that object. He should shortly lay before the Council, by means of the *Gazette*, the measures he was about to take in order to improve roads and facilitate traffic from the East to the West. It lay on the Council to do what it could to facilitate that traffic—which we all agreed to be a good thing—by good laws. The Committee of which the learned Advocate-General was the head, having taken charge of the Bill, had elaborated it in a manner and with an ability which had resulted in very great good. They had done great service; they had much improved the Bill; and so far as their labors had achieved, we accepted those labors, and took the Bill into consideration in the improved form in which they had presented it.

He did not think it now necessary to refer to particular points in which the Committee had somewhat altered the Bill. He must say, however, that he was a little startled at one view of the law which the learned Advocate-General had enunciated. He was not prepared to find that the provisions of the general law of evidence and of the general law for the punishment of crime, debarred us from passing any local law on the subject. His impression was that while we could not alter any general law passed by the Legislative Council of the Governor-General, we had not been debarred from adding to that law particular local laws of our own. The learned Advocate-General was a better judge on such a point than His Honor was, and he must suppose the state of things in this matter to be as the Advocate-General had explained it to us; but still he must hope that the ingenuity for which the Advocate-General was so remarkable, would get us out of that great difficulty.

Then, not dwelling on the minor and general amendments made in the Bill by the Committee, His Honor came to the particular amendment which he did himself the honor to suggest to the Committee, but which, so far, the Committee had not thought proper to adopt. The Committee had told us that in one point they were unanimous—that the system of free recruiting was incompatible with recruiting under the Act; that the two systems could not work side by side. Then as to the question whether Cachar and Sylhet were fitted for free recruiting, they said they were not yet in possession of sufficient evidence to enable them to make any recommendation. Now, he should like to explain that his own suggestion was not that the planters should be left wholly without protection and remedy if once free recruiting were allowed. Under the system of free recruiting, capitalists, planters, those who engaged labor, would have the protection of the ordinary civil law of contract. In the particular case of laborers transported from distant districts, the employers of laborers had also special protection in the shape of the Penal Code, which protected persons in cases where they expended money in importing their laborers. Section 492 of the Penal Code

did establish a penal provision by which these contracts could be enforced. When we had a law of that kind, the general civil law and this particular penal law, contracts not very onerous, and not of very long duration, would be sufficiently protected. His Honor's view was that if you could make recruiting cheap and make transport cheap, these contracts need not be so onerous and so long as to risk their not being sufficiently protected by the ordinary civil law and the ordinary penal law.

The learned Advocate-General had said that under any contract there must be a certain restraint of freedom. But on the other hand, it seemed to His Honor that the position of the coolie whilst his contract lasted was not a position of limited freedom, such as that which the Advocate-General described, but it was a position of very complete absence of freedom. He was not only obliged to labor for a definite time, but he was removed from the position of an ordinary freeman under the law. If he deserted, his master was not obliged to resort to the ordinary process for his remedy, but by the aid of his guards he could seize the coolie and forcibly bring him back. His Honor must say that this system involved more loss of freedom to the coolie than was experienced by a person under the ordinary law of contract. It did make him for the time a slave.

Well then, coming to the particular question upon which the Committee were unanimously agreed, namely that it was not possible that the two systems—the system of recruiting under the Act, and the system of free recruiting—should go on together, he felt bound very much to defer to the opinion of the Committee. At the same time, unanimous though the Committee were, there were very considerable authorities on the other side. He had mentioned that at this time a Bill cognate to the present Bill was under the consideration of the Legislative Council of the Governor-General. It had happened that the member in charge of that Bill, as representing the Government of India, had taken on this particular point a view directly opposite to that which the Committee on this Bill had adopted. His Honor would read to the Council a portion of the speech of the member who was in charge of that Bill in the Council of the Governor-General. He told the Legislative Council of the Governor-General that great portions of his Bill were taken from the Bengal Bill. He then went on to say, comparing his own Bill with the Bengal Bill—

"There was one clause which was conspicuous by its absence, and it would no doubt be asked why it was absent. It was one which was present in the Bengal Act, the Madras Act, and the general Emigration Act—a clause which made it penal for anybody to enable a person to emigrate except in accordance with the provisions of the Act. That penalty we proposed to omit, for the reason which Mr. Hobhouse had already explained to the Council, namely, that it was not our desire to repress, nor to fetter, but to encourage emigration. Mr. Hobhouse could understand why such a clause should be in the General Emigration Act or in the Madras Act, because when the emigrant went beyond the bounds of India or the Madras Presidency, he was beyond the law, and the framers of that law would be quite unable to see him righted if he suffered wrong. But why there should be that penalty upon emigration within the Indian dominions, he could not understand."

Then he went on—

"If it (emigration) sprung up under the Act, we should be delighted; but if it sprung up independently of the Act, MR. HOBHOUSE for one would be more delighted still; at present he did not believe it would spring up of itself, but that was no reason why we should discourage voluntary emigration It was quite sufficient to say that those who did not conform to the provisions of the Act should not have the benefit of contracts under the Act. MR. HOBHOUSE could not conceive a more healthy influence on the condition of Indian laborers than that they should be induced, by returning emigrants or otherwise, to pass of their own accord in large numbers to places where people were willing to employ them If they would do that, it would, in his opinion, be a better state of things than anything that we could hope for under this Bill, and we certainly ought not to put anything in the Bill that would repress such action"

HIS HONOR did not wish to press on the Council this opinion as in any degree superior to that of the Committee on this Bill. He merely read the passage to show that very considerable authorities might differ from that opinion. Not only also did a great authority representing the views of the Government of India differ from that opinion, but amongst the mercantile gentlemen consulted there were some who had taken an opinion similar to that of the Government of India and different from that of the Committee of this Council. He found that Messrs. Borradaile, Schiller and Co. said this:—

"Although we have thus far found recruiting under the Act the best policy, we are nevertheless of opinion that a system of free recruiting, as proposed by the Lieutenant-Governor, is worthy of a trial. Government interference no doubt retards more or less the flow of emigration, and we are inclined to think that the removal of all restrictions and penalties would not only be a boon to the employer, but inspire the laboring classes with greater confidence, and eventually prove of benefit to all interested in the welfare of tea in India.

"At the same time we are averse to an immediate abolition of the system at present in operation. This system has worked fairly well so far Free emigration, on the other hand, has to be tried, and we therefore think it would be advisable to allow—for a time at least—recruiting under either system."

Then we came next to the opinion of Messrs. Jardine, Skinner and Co., an eminent firm, whose authority would have much weight in this Council. They said—

"We take leave to concur in His Honor's opinion as to free-recruiting being quite compatible with a contract system, and there is no reason that we know of why the two systems should not work together."

HIS HONOR had not at all placed these opinions in the balance against the opinion of the Committee of the Council. But he said that both official and private opinions did sometimes differ from that of the Committee of the Council, and therefore he was inclined to suggest, notwithstanding the great authority of that Committee, that the question was still open to consideration.

Then as regards the general question as to whether in the districts of Cachar and Sylhet free-recruiting might not be tried, it was certain, as the learned Advocate-General had put it, that there was a great tendency on the part of the planters to say—"Free-recruiting is an excellent thing, but the freedom of

the coolie was not at all so good a thing." That was an inconsistent view which the Council were not at all likely to accept. But on the other hand, it did not seem that the planters had universally taken this somewhat unreasonable, though not unnatural, view. A good many of them had given an opinion distinctly favorable to the plan His Honor had the honor to propound. He found, amongst the opinions given, the opinion of Mr. R. Blechynden, who said—

"I am quite in favor of the proposal, being of opinion that the adoption of such a system of free-recruiting is very desirable, that it can be carried out satisfactorily, and is likely to prove of benefit to the managers of gardens and of advantage to all concerned in tea cultivation."

In this case no reservation was made that the penal clauses of the Bill should be retained whilst the others should be abrogated.

Then His Honor found that the gentleman representing the Directors of the East India Tea Company, Limited, said—

"I am instructed to express their entire approval of the proposal, as they consider the adoption of a system of free-recruiting will prove advantageous to the tea interests generally, and they therefore trust the measure may be sanctioned."

Next, His Honor found that the Directors of the Bengal Tea Company, Limited, also express their entire approval of the proposal.

Then Mr. S. H. Robinson—

"Fully concurs in the opinion expressed by the Landholders' Association, that such free emigration may be quite safely permitted, and should be freed from all legislative restriction, except such as may be necessary for the purposes of sanitation on the river voyage for emigrants in parties over 20 in number."

Then His Honor found that Messrs. Whitney Brothers said—

"It is our opinion that the interests of the employer and laborer are best served by being left to themselves as much as possible, and we think that the proposal of His Honor the Lieutenant-Governor of Bengal is a great step in the right direction."

And His Honor would draw attention to this as showing that they fully considered the interest of the coolie—

"No contracts should be valid which are made before the arrival of the laborers in the tea districts, and with this restriction we feel quite confident that good results will ensue, for employers having to bear the expense of forwarding the coolies will be exceedingly careful in their own interests to engage with none but those who seem in robust health and are entirely contented with regard to their future expectations."

Then he came to the letter from Messrs. William Moran and Co., who said—

"From our own experience and our knowledge of the views entertained by our planter friends, we have no doubt that free recruiting of labor would be a great boon in some respects, but if that is to be attained by release of the laborers of all restraints imposed by the Contract Law, we much fear a successful issue to such an alteration."

* * * * *

"For the protection of the planter we would venture to suggest that the ordinary law of contract should prevail."

They said that the planter should not be left without protection, and that the ordinary law of contract should prevail, not a highly penal law. Then they went on to say—

"And on the part of the laborer let the Passengers and Carriers Act be amended, if necessary, to secure his full protection; but employers are so thoroughly alive to the advisability of treating their labor force well, and making them happy and contented, that they are not likely to encourage deception."

It seemed, then, that these opinions were not one-sided opinions. Then His Honor would recur to the letter of Messrs. Jardine, Skinner and Co. They went on to say—

"We feel sure that most of the gardens in Cachar would adopt free recruiting if it was introduced under conditions equitable to both employer and laborer. His Honor proposes that no contract should be binding for more than one year unless the cooly had been six months in the tea district. In answer to this we would submit that coolies are seldom recruited under the cost of Rs. 20 per head."

Then having that basis, they went on to suggest the terms which they proposed—

"We would allow laborers to proceed to Cachar direct at their own cost if they choose, and, on the other hand, if their expenses are to be borne by the employer, they should contract with him for eighteen months at least, which, at the rate of bonus for time-expired men, ought nearly to repay the expenses of bringing them to the province. The time named is only six months more than His Honor mentions, and, it seems to us, would offer sufficient inducement for working on the free recruiting system."

So that, in the opinion of Messrs. Jardine, Skinner and Co., they only wished to extend the term of one year to eighteen months. But that, not improbably, this question of a difference of six months might be got over, was made apparent by another statement by which the expense of setting the coolie down in Cachar might be very materially reduced. Probably Rs. 10 would cover the whole operation. If that be so, then a contract for one year would quite sufficiently cover the expense. His Honor had before him a statement which showed the exact expense of conveying a coolie to Cachar:

	Rs.	A.	P.
Railway fare to Kooshtea	1	12	3
Boat hire from Kooshtea to Cachar, from Rs 2 to, at the outside	2	8	0
Food purchased on the way during twenty days' average passage, at As. 1-6 per day per man, when a number are travelling together	1	14	0
Total ...	6	2	3

So that if we put out of the question the purchase-money now paid to the professional recruiter, Rs. 6-2-3 would cover the expense of transporting a coolie to Cachar. Throw in other incidental expenses, and the cost would probably be Rs. 10 per head. At that rate of expense a long term of contract would not be required to recoup the planter's expense.

With respect to another district nearer to Bengal, and also under the Labor Act, namely, Sylhet, he would read to the Council what the Magistrate had said,

and it seemed to him conclusive from these remarks that Sylhet was not a district to which the Act should be applied:—

"The largest gardens are practically worked on the free recruiting principle, which the Lieutenant-Governor is so anxious not merely to extend, but to legalize. Thus, for instance, the Lallee Cherra Tea Garden has no imported coolies. It has nearly 900 free coolies; and so with Malvi Cherra, Tillaghar, Cherragang, Lakartura, Darabhar, and Gamariah, but on a smaller scale The principle adopted by the owners and managers of these tea gardens is this. They give out openly that they will have no "agreement" coolies, and that any coolie who chooses might come and settle in their gardens and take up their quarters in their coolie lines; that they may work as they please and when they please, and that they may go away when they please and return when they please. Now this system has worked remarkably well in Sylhet. Mr. Jennings, one of the pioneers of tea-planting in Sylhet, assures me that he will never have an "agreement" cooly again. Mr. Foly and Mr. Hudson tell me that they sometimes have a great many more coolies settled in their lines than they can possibly have work for."

That certainly was strong testimony to the system of free recruiting. If it was the reality—if it was believed by the Council—he could not conceive the Council continuing the existing system in Sylhet. Cachar was very close to Sylhet, and was separated by only an artificial boundary. If a free system was so good in Sylhet, it could hardly be very bad in Cachar.

On the other hand, in Assam, the testimony was of an opposite character, and the opinion both of the Government officers and planters was that Assam was not yet prepared for a system of free recruiting. The parts of Assam in which tea gardens existed were much further removed than were Cachar and Sylhet. The means of communication were infinitely more difficult, and it was impossible to get coolies up to Assam without a very large expense. His Honor was doing all he could to improve the means of communication to Assam; but in the meantime communication was undoubtedly difficult and expensive. Having regard, then, not only to the expenses incurred by the planters, but to the protection and welfare of the coolies on isolated gardens, far from Magistrates and Protectors, it would not, he feared, be feasible to work a system of free recruiting in Assam at present. As regards Assam, there was an opinion with regard to the proposal for free recruiting to which His Honor would refer. The writer of the letter (Mr. Langlois) said "there was no use of mincing words in such an important matter," and he certainly kept his word. He says:

"You would force upon your managers the painful necessity of taking the law into their own hands to protect your interests The position of your coolies at your gardens would become one far from enviable. The Civil Courts can afford us no relief. It is ludicrous to think of summoning a coolie for breach of contract. Bear in mind that these men do not benefit one pice of the money paid by you to your recruiters."

That last was the saddest part of Mr. Langlois' statement. The recruiters put the money into their own pockets and persuaded the coolies to go; but the coolie did not get a pice. The time had not come to get rid of the recruiters as regards Assam But His Honor was, he ventured to say, still inclined to think that the time had come to introduce a free system in Cachar

and Sylhet; at any rate, the time had come when it was incumbent on the Council very seriously to consider the subject.

The course he suggested was this, that if the Council thought proper to take into consideration the Bill in the form recommended by the Select Committee, we should not proceed further that day, but should adjourn the Council to that day week. In the meantime it would be open to any members to submit any further amendment they wished to propose. He thought it would be not unlikely that the Government might propose tentatively, with a view to consideration by the Council and the public, some amendments which they might deem worthy of consideration; and his view would be, that having received any amendments which might be submitted to the Council at their meeting next week, and having discussed them so far as the Council was disposed to discuss them, we should abandon the further consideration of the Bill till after the long vacation. In the meantime, we should formally consult the officers in charge of the districts, and the planters and employers of laborers—those interested in the question—and, as far as might be, the coolies themselves. It was hoped that a great deal of evidence would be forthcoming within the next two months, and the Council would then be in a position to judge of the course it was desirable to follow. In the meantime, also, we would try to learn from the Government of India what was the probable course of events in regard to these labor districts, and in regard to the Bill now before the Council of the Governor-General His suggestion was, that after we had heard what any hon'ble member might say to-day, we should adjourn the further consideration of the Bill.

THE HON'BLE MR. ROBINSON said he had only one remark to make on what was called the subject of free recruiting. He felt very strongly convinced that there had been some misapprehension as to what the proposal really was, from the manner in which the question was put. It so happened that he had spoken on the subject to Mr. Wordie of Messrs. Jardine, Skinner and Co., and Mr. Struthers of Messrs. Borradaile, Schiller and Co., both high authorities quoted by His Honor. Both those gentlemen had no idea whatever that the proposal contemplated going so far as removing all special legal restrictions from the coolie after his arrival in the gardens. They were both clear on the subject that so far as removing all special legal restrictions to emigration was concerned, they entirely agreed to the plan. But they were not in the least prepared to remove the existing restrictions upon the coolie when he was working in the gardens. And MR. ROBINSON most certainly hoped that before the question was further entered into, some steps might be taken to elicit what the opinions were of gentlemen interested in tea cultivation, when the full plan had been made more plainly known than it seemed at present to have been done; otherwise the Council would only be working in the dark, and would add to the difficulties surrounding the subject.

The motion was then agreed to.

The further consideration of the Bill was postponed.

EMBANKMENTS AND WATER-COURSES.

THE HON'BLE MR. SCHALCH moved that the Bill to amend the law relating to Embankments and Watercourses be further considered in order to the settlement of the clauses of the Bill. When this Bill was last before the Council he had expressed a hope that when it was next brought forward, it would be merely for the purpose of being passed. But during the interval that had elapsed, it had been thought expedient carefully to look over the provisions of the Bill with a view to making any amendments that might be brought to notice. The result had been that he had submitted to the Council a paper of amendments which he intended to propose. If the Council determined to take the Bill into consideration, he would then be able to state the reasons which induced him to propose these amendments.

The HON'BLE BABOO DIGUMBER MITTER said that in his humble opinion the amendments proposed to be moved by the Hon'ble Member in charge of the Bill were not such as could be conveniently and properly considered by the Council. The amendments were too numerous to be considered in this way, and they seemed to him to introduce a radical change in the rules of procedure as well as to modify the Bill in other respects. It would be much more convenient that the Bill be re-committed in order to the consideration of the amendments of which notice had been given.

HIS HONOR THE PRESIDENT said, perhaps it would be most convenient that he should state the course the Government proposed to take in regard to this Bill. The Hon'ble Member on the right had alluded to the changes proposed by the amendments, of which notice had been given, as radical changes. No doubt they were very bulky amendments, and in one respect the change proposed was a radical change, inasmuch as it changed the initiative from the Public Works Department to the Civil Department. The radical change was confined to that one change. His Honor was also inclined to hope that the change—a considerable change—which the Government thought it right to make, was one which would make the Bill more palatable, if not more acceptable, to the Hon'ble Member and the other Hon'ble Member who sat near to him. The Council were now near the end of the Session, and the course suggested by the Hon'ble Member would not be convenient. We were now nearly come to the long vacation; we were about to disperse to some distance, and we should find it difficult to get together an efficient Committee at this season. The changes proposed had been very carefully considered, although HIS HONOR did not think they amounted to any great change What we proposed was that if the amendments, or some or any of the amendments, were adopted, the Bill would be immediately reprinted with the amendments made that day; and at our next meeting that day week, the Members would have an opportunity of moving any further amendments of which they might give notice. After that, during the long vacation, further proceedings with regard to the Bill would be suspended. A further opportunity would then be given of carefully considering the revised and re-amended Bill. Hon'ble Members would then again be able to bring forward any amendments

which in the course of that period they might digest. This was the course proposed, and he hoped the Hon'ble Member would think it was at least as convenient a course as that suggested by him.

THE HON'BLE BABOO DIGUMBER MITTER observed that after the explanation which had been offered, he would withdraw the amendment which he had intended to move. His impression was that at the next meeting it was the intention to move the passing of the Bill.

The motion was then agreed to.

The HON'BLE MR. SCHALCH said that in bringing these amendments before the Council, he wished to point out that they were not so much matter of detail, but were, in a great measure, matter of principle. This Bill had been twice if not thrice re-committed, and it would be a pity to have recourse again to that proceeding. The amendments which he had proposed might be divided into amendments of four classes. The most important was the substitution of Parts II, III, and IV, as printed in the notice of amendments, for Parts II, III, and IV, as they stood in the Bill. They were, in fact, word for word exactly the same as they stood in the Bill, with the exception that where the word "Engineer" stood we proposed to substitute the word "Collector." The reason of this proposal was twofold. First it had been suggested in some quarters, and amongst others by the British Indian Association, who represented in a great measure the zomindars, that the Bill placed too great power in the hands of the Engineer. MR. SCHALCH could not say he fully concurred with that objection, because it would be found that no power could be conferred on the Engineer until complete publication had been given to the measure proposed to be undertaken, until all parties interested had been allowed an opportunity of appearing and stating their objections, and until those objections had been disposed of upon a judicial enquiry; and when even that was done, the whole of these orders were open not only to appeal, but also to revision, right up to the Government of Bengal. He thought therefore the Bill might well stand as it was.

But it was supposed that if the Collector was substituted for the Engineer, there would be greater responsibility thrown upon him; he would be more careful how he conducted his proceedings, and would not be led away by professional feeling, as he was likely to be if the Engineer had the initiating power. It had therefore been suggested that it was better to give the Collector the initiative, and to vest the powers in him; and then, as far as the purely professional work was concerned, it would be exercised by the officers under him, but under his responsibility.

Another reason was that the position of the Executive Engineer as he formerly existed, had been changed: he was now the District Engineer and was more directly subordinate to the Collector than the Executive Engineer was.

These were the reasons which suggested the substitution of the Collector for the Engineer in Parts II, III, and IV. Part II was taken word for word from the Sections of the Bill as it now stood, somewhat transposed and re-arranged. So also was Part III; and Part IV was also the same, with the exception that whilst we retained the more important powers in the hands of

the Collector, we gave to the Engineer such powers as merely referred to the making of sluices and other subsidiary works.

It would then be seen that there was no reason for an inquiry into details: the alterations proposed involved only the principle of substituting the Collector for the Engineer. The amendments did not make any change except such as the Secretary would be empowered to make in the way of drafting. If therefore the Council were pleased to proceed at once with the consideration of the Bill, the Bill would in due course be printed and taken up again at the next meeting of the Council, so as to afford any Member who might desire it an opportunity of proposing further amendments.

In Section 3, the interpretation clause, the HON'BLE MR. SCHALCH moved the following amendments:—

To add to the definition of "embankments," the words "and also all buildings intended for purposes of inspection and supervision;" the reason for the addition of these words being to include the bungalows of Engineers and other such buildings within the definition:

To substitute the following for the definition of "Engineer:" "The Engineer means the District Engineer or any Engineer specially appointed by the Lieutenant-Governor of Bengal to perform the functions of an Engineer under this Act." In regard to this amendment, MR. SCHALCH said that it was necessary to alter the definition to meet the altered position of the former Executive Engineer. In place of the former Executive Engineer, there would now be the District Engineer; and the latter part of the proposed amendment was necessary to meet the case of long lines of embankment for the supervision of which a special Engineer would be necessary.

The motions were severally agreed to.

THE HON'BLE MR. SCHALCH next moved the substitution of the following for Parts II, III, and IV, as they stood in the Bill. He had nothing further to say in explanation of this motion, except that the only question involved was whether the Collector should be substituted for the Engineer throughout these parts.

"PART II.

Powers of Collector and procedure thereon

Powers of Collector

4. Under the conditions and in the manner hereinafter provided—

Power to take charge of embankments

Clause 1.—The Collector may cause any embankment which connects public embankments, or forms, by junction with them part of a line of embankments, or any embankment or water-course which is necessary for the protection or drainage of the neighbouring country, to be taken charge of and maintained by the officers of Government.

Power to remove embankments and obstructions

Clause 2.—The Collector may cause to be removed or altered any embankment which endangers the stability of a public embankment, or any obstruction of any kind which interferes with the general drainage of any tract of land.

Power to change line of embankment

Clause 3.—The Collector may, when necessary, change the line of, or lengthen any, public embankment; or make a new embankment in the place of or renew any public embankment, or make an embankment in any place in which he may deem such embankment

required for the protection of any lands, or for the improvement of any water-course; or make a sluice in any public embankment.

Power to improve drainage.

Clause 4.—The Collector may construct any sluice or water-course, or effect any alteration in any public water-course, when such construction or alteration may be required for the improvement of the health, or for the protection of any village or cultivable land.

Power to alter roads and construct water-courses.

Clause 5.—The Collector may call upon the person in charge of any road which interferes with the drainage of any tract of land to alter such road, or to construct any water-course under or through such road. In the event of such person failing to comply with such requisition in such manner and within such time as the Collector shall prescribe, the said Collector may cause the road to be altered or a water-course to be constructed. The expenses of such alteration or construction shall be borne by the person in charge of the said road.

Applications for sluices to be made to Collector.

Clause 6.—If any landholder, farmer, or cultivator, be desirous of having a sluice made in any public embankment for the purpose of drainage or irrigation, he shall make an application in writing to the Collector of the district in which such embankment is situate. The application shall contain such particulars of the land to be drained or irrigated as may enable the Collector to judge of the advantage which may be derived from the work.

Application for new embankment or drainage to be made to Collector.

Clause 7.—Whenever any person is desirous that any new embankment be erected, or that any new water-course be made, or that any water-course be obstructed or diverted, if such work is likely to interfere with, counteract, or impede any public embankment or any public water-course, he shall apply to the Collector, and at the time of making such application shall deposit with him a statement of the proposed work.

Procedure

5. When it shall appear expedient to the Collector that any of the works specified in the last preceding section should be executed, he shall cause to be prepared plans, specifications, and estimates of the proposed works, together with a copy of the survey map showing the boundaries of the various estates likely to be affected by the said works, and he shall cause a proclamation to be issued giving notice of his intention to cause such works to be executed. Such proclamation shall be in the form, and state the particulars mentioned, in schedule (A) annexed to this Act; and there shall be appended thereto a copy of the plans, specifications, and estimates of the proposed works, together with a copy of the survey map as aforesaid. The Collector shall not commence any of such works until final order made in respect thereto under the provisions of Sections 8, 65, and 66 of this Act.

Publication of proclamation

6. Every such proclamation shall be published by affixing the same at the cutcherry of the Collector, and in the manner provided in the third clause of Section 62.

Proclamation to be published for thirty days.

7. Every such proclamation shall be published not less than thirty days before the day appointed for hearing the persons interested.

Hearing of objections to works.

8. The Collector shall, on the day appointed for the hearing, or on any subsequent day to which the hearing shall be adjourned, hear the objections of any persons who may appear, and, after recording any evidence which they may adduce, shall pass an order in regard to the execution of the proposed works. Notice of such order shall be served on such persons as may have appeared in pursuance of the proclamation.

Authority to take proceedings where lands likely to be affected by the works are in different districts;

9. If the lands which are likely to be affected by any such proposed works are situated within the limits of different districts, the Collector of any district within which any portion of such lands is situated shall apply to the Commissioner of the division for authority to proceed in such matter; and the Commissioner of the

division, if all the lands are situated within the division, may give authority to such Collector, or to any other Collector within whose district any portion of such lands is situated, to proceed in respect of all the lands likely to be affected by such works.

or different divisions.

If the districts within which the lands likely to be affected by any such works are situated, are subject to the Commissioners of different divisions, the Collector shall apply to the Commissioner of the division within which his district is situated, and such Commissioner may, with the concurrence of the Commissioner to whom the other district is subject, give authority to proceed to such matter.

PART III.

Procedure in cases of imminent danger to life or property.

Proceedings in emergencies.

10. Whenever the Collector shall be of opinion that the proceedings commenced by notice under Sections 5 to 8 of this Act would cause delay in the exercise of any of the powers conferred upon him by Clauses 2, 3, and 4 of Section 4 likely to be attended with grave and imminent danger to life or property, it shall be lawful for him forthwith to commence to exercise such powers. Provided that hes hall forthwith cause to be prepared the plans, specifications, and estimates of the proposed works, together with a copy of the survey map as provided in Section 5, and shall cause a proclamation to be issued, as provided in that section, giving notice that the work mentioned therein has already been commenced, and thereupon such proceedings and inquiries shall be had as in by Part II of this Act are directed.

Power to take possession of land.

11. Whenever any land, or earth from any land, the property of any person, is required for purposes of any works commenced in pursuance of the provisions of the last proceeding section, or for the purposes of Section 17 in cases where the Collector shall be of opinion that proceedings for the acquisition of such land, according to the provisions hereinafter contained in Section 30, would cause delay as aforesaid, the Collector shall cause a proclamation to be issued in form in Schedule (B) annexed to this Act, giving notice thereof at convenient places in the locality in which such land is situated, and he may at the same time take possession of the same for the said purposes.

Compensation for standing crops and trees.

12. The Colllector shall ascertain and record the nature and estimated value of the crops and trees (if any) standing on such land, and shall offer adequate compensation to the persons interested. If such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions of Section 34.

Power to Engineer to act in absence of Collector.

13. The Collector may depute to the Engineer the powers described in Sections 10, 11, and 12, subject to his own general orders, and in that case when the Collector is not present the Engineer may, if he shall be of opinion that delay for the purpose of obtaining the orders of the Collector would be attended with grave and imminent danger to life and property, exercise the powers conferred on him by the Collector.

Power to restore embankments, &c.

14. Whenever, upon an inquiry had under the provisions of this Part, it has been determined in the final order to be passed on such inquiry that anything done by the Collector or by the Engineer under the last preceding section was necessary, the land or the embankments or drainage shall, so far as any alteration thereof shall appear to be necessary, be at the expense of the Government restored as nearly as possible to the state in which they were when the Collector commenced to act under the provisions of this Part; and any person who shall have sustained loss, damage, or injury by the execution of such works, shall receive compensation from the Government, to be assessed according to the provisions contained in Part V of this Act.

Section 9 to apply to proceedings under this Part.

15. The provisions of Section 9 shall be applicable to proceedings taken under this Part.

PART IV.

Powers of Engineer.

Engineer subject to control of Collector.

16. The power conferred on the Engineer under this Part shall be exercised subject to the general control and orders of the Collector.

Power to make repairs.

17. The Engineer may make any repairs in, and may do all acts necessary and proper for the maintenance of any public embankment, public water-course, or other work executed or taken charge of under the provisions of this Act, or of any of the Acts repealed by this Act.

Power to alter railroads or construct water-courses.

18. The Engineer may call upon the manager or other person in charge of any railroad which interferes with the drainage of any tract of land, to alter such railroads or to construct any water-course under or through such railroad. In the event of such person failing to comply with such requisition in such manner and within such time as the Engineer shall prescribe, the Engineer may thereupon, with the previous sanction of the Lieutenant-Governor, cause the said railroad to be altered or a water-course to be constructed in such manner as the Lieutenant-Governor shall direct. The expenses of such alteration or construction shall be borne by the said manager or other person in charge of the said railroad

Power to make temporary road-way, water-course, or dam.

19. When any person is desirous that a temporary road-way thould be made over, or that a temporary water-course should be made through any public embankment, or that a temporary dam should be constructed in any embankment, river, or public water-course, he shall apply to the Engineer, who shall communicate the application to the Collector, and the Collector shall pass such orders thereon as he shall think fit. If the proposed work is to be executed by an officer of Government, the applicant, before the commencement of the work, shall deposit the amount estimated by the Engineer to be necessary to defray the expenses of, and incidental to, making and removing such road-way, or of, and incidental to, making and closing or removing such water-course or dam. If the amount deposited is found insufficient, the Engineer shall recover from the said applicant the further amount required; and if it exceeds the amount required, such excess shall be returned to the said applicant.

Power to remove houses.

20. Whenever the Engineer shall be of opinion that the removal of any trees, houses, huts, or other buildings, situated between a public embankment and the river, is necessary, he shall make a report to that effect, accompanied by a detailed statement of the trees, houses, huts, or other buildings to be removed, to the Collector of the district in whose jurisdiction the land on which such trees, houses, huts, or other buildings stand, is situated, and the Collector shall report the same to the Lieutenant-Governor, in order that proceedings may be taken, in accordance with the provisions of "The Land Acquisition Act, X of 1870," or other law for the time being for the acquisition of land for public purposes, for obtaining possession of such trees, houses, huts, and buildings. Provided always that in case the Collector be of opinion that the delay required by such proceedings is likely to be attended with grave and imminent danger to life or property, it shall be lawful for him forthwith to cause such trees, houses, huts, or buildings to be removed, and in such case the compensation due therefor shall be ascertained and paid in the manner hereinafter provided.

Sluices to be opened or shut under authority of the Engineer.

21. Sluices constructed in any public embankment shall be opened or shut only by or with the general or special permission of the officer in the immediate charge of the embankment, under such orders, either general or special, as he may receive from the Engineer.

Power to appropriate land or earth for embanked towpath.

22. In any case where an embanked towpath has heretofore been maintained by Government alongside any canal, river, khal, or channel, the Engineer shall be entitled to appropriate, without payment, as heretofore, land or earth for the maintenance, repair, or re-

construction of such embanked towpath. If in any case the Engineer shall consider it necessary for the purposes of towing to enlarge an existing towpath, or to construct a new towpath, proceedings shall be taken in accordance with the subsequent provisions of this Act relating thereto.

Power to enter and survey land, &c

23. It shall be lawful for the Engineer, or any person whom he may authorize in that behalf, in order to carry out any of the purposes of this Act,

to enter upon and survey and take levels of any land,

to dig or bore into the subsoil,

to do all other acts necessary to ascertain whether the land is adapted to the purpose projected by such Engineer, or by the Collector;

Power to mark out line

to set out the boundaries of the land proposed to be taken, and the intended line of the work proposed to be made thereon,

to mark such levels, boundaries, and line, by placing marks and cutting trenches,

Power to clear land.

and, where otherwise the survey cannot be completed or the levels taken, to cut down and clear away any part of any standing crop, fence, or jungle.

Previous notice of entry

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so

Payment for damage.

The Engineer or other person so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final."

The Hon'ble Rajah Joteendro Mohun Tagore said before the Council proceeded to consider the amendments now before them, he wished to offer a few remarks. The main object of these amendments seemed to him to be the transfer to the Collector of the power originally vested in the Engineer. To him this seemed practically a nominal change. For it was a well-known fact that the hands of the Collector were already too full, and that the proper supervision and direction of embankment works would require much more time and attention than he could well spare. Besides, the professional advice of the Engineer would always weigh with the Collector, and that officer, it might be imagined, would much rather prefer to leave the settlement of embankment questions in the hands of the Engineer than to take the responsibility upon himself. Then again, Section 64, as proposed to be amended, distinctly authorized the Collector, at his discretion, to delegate his power to the Engineer, and this would much facilitate that end. So that virtually the matter would remain very much in the same state as it stood in the Bill at present, and these amendments could in no way be considered improvements: on the contrary, they were likely to do more harm than good. For under the Bill as it stood, the Collector held the position of a disinterested judge; but as it was proposed to alter it under the amendment, if the Collector was to have a nominal power and have the discretion of delegating afterwards that power to the Engineer, he would naturally feel a sort of bias to uphold an authority which he had himself delegated. Under these circumstances, Rajah Joteendro

MOHUN TAGORE thought the adoption of the amendments before the Council would be of scarcely any advantage.

HIS HONOR THE PRESIDENT said he should like to say one or two words in explanation. It was perfectly true, as the hon'ble member said, that the Collector had his hands pretty full, and that he might not be master of engineering details. But, on the other hand, it seemed to him that the most essential and practical advantage of the amendment was this, that as the Bill stood the Engineer was entitled to take the initiative, and if the Collector was opposed to the proposal of the Engineer, he had to find the means or arguments to controvert the opinion of the Engineer. The Collector in that case was bound to take up the whole case and decide upon it. As the Bill stood the Collector was not bound to move at all; he was not bound to give any reasons. He might *pooh-pooh* the Engineer; he might say, "I am not going to take it up." It was for the Collector to be satisfied that there was necessity before he would move. He was the person who under the law, if the amendment was accepted, would be required to take the initiative. The Engineer would not be in the field until the Collector had taken the initiative. That was entirely different to the case as it now stood, where the Engineer was entitled to take the initiative and force the matter to a decision.

As regards Part IV, it was true the Collector had the power to delegate his powers under that Part to the Engineer. But if hon'ble members would look to that Part they would find that under it none of the radical functions of the Collector could be delegated. The functions that could be delegated were minor and subsidiary, such as the power to make repairs, the power to alter roads, the power to make temporary road-ways, water-courses, or drains, the power to remove houses, the power of opening or shutting sluices, the power to take land or earth for embanked tow-paths, the power to enter and survey land, and such like minor powers. These were minor and subsidiary powers altogether of a secondary description, and not the radical and main powers which the Collector was to exercise under the Bill.

The HON'BLE RAJAH JOTEENDRO MOHUN TAGORE observed that under Section 64 as proposed to be amended all the powers of the Collector might be delegated to the Engineer. If the delegation were confined to the minor powers referred to by His Honor, he would not have raised the objection.

HIS HONOR THE PRESIDENT remarked that the Council had not yet come to the amendment upon Section 64. If the amendment proposed would have the effect suggested by the hon'ble member, the Government would be open to conviction.

The HON'BLE MR. SCHALCH said the Collector would have all the powers under the Bill. The Collector had very hard work, and he could not do everything himself; he must do the work through the officers of the various departments under his control. He could not, for instance, personally investigate every case of manslaughter. He was the head of the Executive in the district, and must work through his subordinates in the different grades; but he was responsible that the men

under him did their work properly: the responsibility was his. The Engineer might be inclined to look to the credit of his work regardless of expense; but now we proposed to place the power of initiation in the hands of one who might be deficient in engineering, but who would study the interests of the parties concerned.

His Honor the President observed that at any rate they should follow the regular order of the amendments proposed. Until an amendment was made in Section 64, the clause would not have that effect. He should be prepared to support the objection raised to the amendment proposed in Section 64; but the consideration of that matter must be reserved until they came to it in regular order. The amendment now before the Council would not have the effect which the hon'ble member apprehended, except as to such minor works as those to which His Honor had referred.

The Hon'ble Rajah Joieendro Mohun Tagore observed that his objection was as to the tendency of the whole of the amendments. He wished to point out that the amendments would have very little practical effect in altering the state of things in the Bill as it stood, and the objections against vesting the Engineers with too large powers would remain much the same.

The motion to substitute the amended Parts II, III, and IV, was then agreed to.

The Hon'ble Baboo Digumber Mitter rose to move the amendments of which he had given notice, when—

The Hon'ble Mr. Schalch said the notice given by the hon'ble member had not been sufficiently long in the hands of the members. The discussion upon the amendments under consideration would not now be closed, and the hon'ble member could have an opportunity of bringing forward his amendments at the next meeting. The notice of amendments of the hon'ble member only reached Mr. Schalch that morning, and he had scarcely had the opportunity of considering their bearing upon the Bill.

The Hon'ble Baboo Digumber Mitter observed that the amendment which he was first about to propose was an amendment upon an amendment, and was rendered necessary by the amendments of the hon'ble member in charge of the Bill, and therefore hardly required notice.

His Honor the President said that although ordinarily an amendment upon an amendment did not require notice, it might be of such an important nature as to necessitate much consideration. He himself had only received the notice that morning, and would ask the hon'ble member to postpone his amendments until the next meeting, when he could have an opportunity of bringing them forward.

The Hon'ble Baboo Digumber Mitter observed that after the explanation given by His Honor the President that it was not the intention to pass the Bill at present, he would agree to postpone the consideration of his amendments until the next meeting of the Council.

The HON'BLE MR. SCHALCH moved the substitution of the following for Section 30, the only alteration being a legal one as to the mode of referring to the Land Acquisition Act:—

Acquisition of land

"30. Whenever in the course of proceedings under this Act, save in those cases in which the Collector has proceeded under the provisions of Part III, it appears that land is required for any of the purposes thereof, proceedings shall be forthwith taken for the acquisition of such land in accordance with the provisions of the Land Acquisition Act, X of 1870, or any other law for the time being for the acquisition of lands for public purposes."

The motion was agreed to.

On the motion of MR. SCHALCH verbal alterations were made in Sections 32, 35, 38, 39, 40, 42, 43, 56, 60, 65, and 67.

The amendments in reference to Sections 57, 59, and 60 were, by leave, withdrawn.

With reference to the proposed amendment to Section 64—

The HON'BLE MR. SCHALCH said the object of these amendments was to give the Collector power to delegate his powers to the Engineer.

HIS HONOR THE PRESIDENT observed that he did certainly think that the amendment was open to the objection urged by the hon'ble member on the right (Rajah Joteendro Mohun Tagore). The section, as proposed to be amended, would read thus:—

"All the powers and authorities vested in the Collector by any of the sections of this Act may be exercised by the engineer in cases referred to him by the Collector: provided always that it shall be lawful for the Collector to recall any case so referred, and to proceed thereon, either adopting or not adopting any of the proceedings theretofore had thereon as to him shall seem fit"

HIS HONOR thought the section had better be omitted altogether.

The HON'BLE MR. SCHALCH said the Collector could not exercise all these powers himself. It must be first judicially settled whether in any particular case the Collector should exercise the powers proposed to be vested in him, and then when it had been decided that he should exercise these powers, he would delegate the execution of them to the Engineer. He could not delegate the power until it had been determined that he should exercise it. He would, however, at the suggestion of the President, withdraw the amendment at present, and consider whether it was necessary to bring it forward again at the next meeting.

The amendment was by leave withdrawn.

The HON'BLE MR. SCHALCH moved that after Section 66 the following section be inserted: it was a mere transposition of Section 21 of the Bill to this place, where it came in better, as it applied to all inquiries, and not merely to inquiries under Part III:—

Powers on inquiry and appeal.

"In any inquiry or appeal held under this Act, the Collector and the Commissioner shall respectively have the same powers as those conferred on courts by the Code of Civil Procedure of summoning and examining witnesses, and compelling the production of documents."

The motion was agreed to.

The HON'BLE MR. SCHALCH moved the insertion of the following section after the above, the object being to give a general power of control under the Act:—

General control of Commissioner and Government.

"All the powers of a Collector under this Act shall be exercised under the general control and orders of the Commissioner of the division, and all the powers of Collectors and Commissioners shall be exercised subject to the general control and orders of the Board of Revenue and of the Government."

The motion was agreed to.

The HON'BLE MR. SCHALCH moved that it be an instruction to the Secretary to alter the numbers of the sections and letters of the schedules accordingly.

HIS HONOR THE PRESIDENT observed that he put the motion without prejudice as to the necessity of it. His impression was that the Secretary, under the direction of the President, had this power without the necessity of a motion in Council, and that such was the practice in the Legislative Council of the Governor-General.

The motion was agreed to.

The HON'BLE MR. SCHALCH said, Schedules (A) and (B) were not now both necessary, and had therefore been amalgamated. He would move that the following schedule be substituted for Schedules A and B, as they now stood in the Bill:

"SCHEDULE A.—(*Referred to in Section* 6.)

All persons interested are hereby required to take notice that it is my intention to [*here state the nature of the work to be undertaken*] for the purpose of [*state the purposes*]. For the execution of this work the undermentioned land will be required to be taken up:—

1	2	3
Pergunnah in which land is situated.	Name of village in which land is situated.	Area of land.

Plans, specifications, and estimates of the proposed work, together with a copy of the survey map showing the boundaries of the various estates likely to be affected by the said work, are herewith submitted.

The total probable cost of such work will be the sum of Rs. , and the rate per acre of the area benefited or protected by the said work is estimated at Rs .

The following estates and villages will probably be affected by the work proposed [*here set out a list of the estates and villages*]:

Any person interested and desirous of showing cause against the execution of the works specified is hereby required to appear before the Collector for that purpose on the day of The day of

A B.,
Collector of "

The motion was agreed to.

On the motion of MR. SCHALCH verbal amendments were made in Schedules (C) and (D).

The further consideration of the Bill was postponed.

His Honor the President said care would be taken that the Bill as amended would be placed in the hands of the members at the earliest possible period, and hon'ble members would have time to consider the Bill, and if they so wished, to circulate notices of amendments. He hoped that if they wished to do so, the notices would be circulated at an early date.

The Council was adjourned to Saturday, the 13th instant.

Saturday, the 13th September 1873.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble V. H. Schalch,
The Hon'ble Lord Ulick Browne.
The Hon'ble C. E. Bernard,
The Hon'ble Moulvy Abdool Luteef, Khan Bahadoor,
The Hon'ble T. M. Robinson,
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor,
and
The Hon'ble Baboo Digumber Mitter.

EMIGRATION TO THE LABOR DISTRICTS.

His Honor the President said the first business before the Council was the adjourned debate on the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet. Amendments had been placed on the paper in His Honor's name, the object of which was to carry out what he intimated it might be desirable to do, namely, to put in a definite form the changes which it seemed to him might be possible. His own opinion had not been definitely formed; the opinion of the Council was not definite. At the same time, the learned Advocate-General had observed on a late occasion that there was room for a great deal of misunderstanding as long as propositions were not placed in a clear and definite shape. The object was to put his suggestions into the form of amendments, clear and definite. The Council would observe that His Honor had also proposed that the discussion be adjourned for the space of two months; so that we might consult all concerned. We should consult the officers of Government, planters, and coolies, as regards the particular points raised by these amendments, and we should give all parties interested, and the public in general, an opportunity of suggesting anything more they might have to say in regard to the whole Bill before the Council. He might add, the Government would have an opportunity of communicating with the Government of India upon the subject. It would be seen that the amendments, of which notice had been given, were several. He thought it well, at the outset, to distinguish Cachar from Sylhet; because it might be that those interested in Sylhet would think it desirable to remove

Sylhet from the operation of the Act, whilst those interested in Cachar might not think it desirable to remove Cachar. Therefore he put first an amendment which proposed to omit "Cachar" from the operation of this Bill, and secondly, another amendment proposing to omit "Sylhet." The result of the omission of those words would be that those districts would be wholly removed from the operation of this Labor District Act. The consequence would be that if the amendments were accepted, Sylhet would be in the same position as Mymensingh now was, or any other district in Bengal; and if the amendment in regard to Cachar was also accepted, it would be in the same position; the movements of laborers in those districts would be perfectly free, and the relations of the coolies with regard to their masters would be regulated by the ordinary law of the land, the law of contract, and that provision of the Penal Code to which he had adverted. His Honor was not himself thoroughly up in the provisions of the various laws which regulated the carriage of the passengers. It might be necessary to enact certain provisions in order to secure that vessels carrying a large number of persons should do so in a manner consistent with their safety, and freedom from disease. This might apply to many parts of the country and to many rivers of this country. But in so far as the special provisions of this Bill were concerned, the rough general effect of the first two amendments, if they were accepted by this Council, would be wholly to remove Cachar and Sylhet from the operation of this Bill, and to place them on the same footing as all the rest of the country.

Then, he came to the third amendment, which he would take in connection with the fourth amendment, because the third amendment was merely subsidiary to the fourth. The fourth amendment was one which was adopted *totidem verbis*, in so many words, from the British Burmah Emigration Bill now before the Council of the Governor-General. His Honor had said that although the Committee of this Council had expressed themselves unfavorably to the concurrent operation of a free system of recruiting and a special system of recruiting, the representative of the Government of India in the Governor-General's Council had taken an opposite view, and had expressed an opinion that it would be very desirable that the free system should not be checked, but that opportunity should be given to those who preferred a free system to adopt it. The shape in which that proposition was put in the Governor-General's Council was the shape in which it was now expressed in the fourth amendment submitted to this Council. The result was that while recruiting otherwise than under the Act would in no degree be a penal offence, on the other hand no contract to go to the labor districts would be binding upon the emigrant unless made in accordance with the provisions of this Act. The consequence would be that if people did not recruit under the Act, they would recruit to a certain extent on their own risk; they would not be punishable. But contracts made before the emigrants reached the labor districts would not be valid and binding upon those laborers. A man who agreed to go was defined to be an emigrant under the Act until he reached the labor districts: when he reached the labor districts he

became a laborer, and was no longer an emigrant. So long as he was in the stage of an emigrant, he would not be bound by any contract to labor which he might make otherwise than under the provisions of this Act. But when he reached the labor districts, he ceased to become an emigrant; he then became a free man, and was competent to contract as any other local laborer might now contract. His Honor proposed by the third amendment to alter the definition of "emigrant" to meet that. As the definition stood an emigrant was only a man recruited by a garden-sirdar or recruiter, and registered. He proposed to strike out those words, and he proposed to make the definition to be simply this, that an emigrant would be a person who had agreed to proceed to a labor district for the purpose of laboring therein for hire. The consequence would be that in respect to whatever districts the Council might retain as labor districts, the emigrant would be subject to the provisions of the Act until he reached those districts. If the emigrants were conveyed in gangs not exceeding twenty, they were exempt from the operation of the passenger provisions of the Act, and they would be free to go as they liked; but although not recruited under the Act, if conveyed in large batches and in crowded steamers, they would still be emigrants and subject to the sanitary provisions of the Act. On reaching the labor districts they would be free, and free to contract under the ordinary law. There were various ways in which this question of free recruiting could be put. His Honor had put it in that form because it had the high authority of the member in charge of the Bill in the Council of the Governor-General. At the same time it would be free to the members of the Council and others interested to suggest that free recruiting should be put in any other form.

Then he came to the last amendment, which was on a different subject, and referred to a subject not so directly and distinctly mooted before the Council. On the last occasion there was a discussion on this Bill which had the appearance somewhat of a difference of opinion,—he hoped there was not a final difference of opinion,—but there was a certain conflict of argument between the learned Advocate-General and himself in regard to the use of the term "slavery" under the labor laws. His Honor said it seemed to him that the absence of freedom under the present labor law was of a very different character from the absence of freedom under the ordinary law of contract. As the Bill at present stood, it seemed to him that a form of *quasi*-slavery was involved in the 123rd section: it made it that a cooly was not a free man under the ordinary protection of the law; if he attempted to run away, his master might seize him as a master seizes a runaway slave, without the intervention of any legal proceeding That was a kind of fugitive slave law. His Honor's experience was that that provision had been to a certain extent the subject of occasional abuse. He knew that there had been gardens in which there were cordons of chowkidars, and in which the coolies were kept somewhat like prisoners in a jail. At the same time he must state distinctly that he believed that such a state of things was altogether the exception. We had lately published in the *Gazette* a description of the tea gardens submitted

by the Commissioner of Assam, in which he told us that the condition of the tea gardens, of the planters, and of the coolies, had greatly improved; that the condition of the gardens as a rule was good, and that the coolies were happy and contented. His Honor's view of the matter was that in these good gardens where the masters were well to-do, where the coolies were happy and contented, they did not require a fugitive slave law like this. These gardens could get on very well without it. On the other hand, in the rare cases in which abuses took place, in which the power of arrest was abused, it was desirable that that power should be removed. He did not pledge himself to an opinion on that point. He quite agreed that a great deal was to be said on both sides, and he placed the amendment on the paper in order that the matter might be fully discussed, that those interested in the matter might have an opportunity of giving their opinion, and that we might have a full expression of all that had to be said on both sides. He confessed that whilst he thoroughly acknowledged and saw with the greatest pleasure the great improvement which had taken place in the tea districts, he personally regarded with very considerable repugnance that particular provision which he had called a sort of fugitive slave law, and he thought we should consider whether we could put the laborers more in the position of free men. He had therefore deemed it fairer to put this amendment on the paper at once, that all interested might be warned that it was under consideration whether we could do without the first two clauses of Section 123. The penal law for the punishment of desertion, the means of arresting deserters and putting them to labor by legal process, would remain the same as before. The whole change would be this, that, instead of the planter taking the law into his own hands and seizing a deserting laborer, he would be bound to follow and prosecute him. The deserter would still be liable to punishment, and liable to the provision which forced him to work out his contract.

These were the amendments which His Honor thought it right to place before the Council. He did not propose now to press them on for decision. He quite agreed with the Committee that these questions were not ripe for decision, and in that view he proposed that the discussion of the above amendments be adjourned for the space of two months.

The question was then put that the discussion of the following amendments, of which notice had been given, be adjourned for the space of two months :—

In the Preamble and in Section 3, Clause 3, definition of "Labor Districts," omit the word "Cachar."

In the Preamble and in Section 3, Clause 3, definition of "Labor Districts," omit the word "Sylhet."

Section 3, Clause 6, definition of "Emigrant," omit the words "with any garden-sirdar or recruiter," and the words "and has been registered as hereinafter provided."

Omit Sections 15, 16, and 17, and substitute the following new section :—

"No contract to labor in the labor districts shall be binding on an emigrant unless it is made in accordance with this Act."

Section 123.—Omit Clauses 1 and 2.

The motion was agreed to.

EMBANKMENTS AND WATER-COURSES.

The adjourned debate on the Bill to amend the law relating to embankments and water-courses was resumed.

THE HON'BLE MR. SCHALCH said it was understood at the last meeting of the Council that the Bill in the form in which it was then accepted would be early printed and circulated to the Members, so that if any objections were taken to the amendments then introduced, they might be submitted to the Council and brought up for discussion at the present meeting. He was happy to say that no amendments had been proposed in regard to the alterations made at the last meeting, although there still remained the amendments brought forward on a former occasion by the Hon'ble Member opposite (Babu Digumber Mitter). With regard therefore to the amendments made at the last meeting, it was unnecessary further to discuss them. He would, however, ask the attention of the Council to a few amendments, of which notice had been given, on the Bill as printed since the last meeting.

The first of these amendments was in Section 5, and proposed to omit the words "there shall be appended thereto a copy of" in lines 13 and 14, and insert after the word "aforesaid" in line 16 "shall be kept at the office of the Collector, and shall be open to the inspection of any interested person."

That provision enacted that with every proclamation made under that section there should be sent copies of the plans, specifications, and estimates and a copy of the survey map. As these proclamations and copies had to be made and proclaimed in the manner provided in the third clause of Section 56, that was to say on the proprietor and at the mâl cutchery of every estate affected by the proposal, it would be utterly impossible to send with these numerous proclamations copies of the plans, specifications, estimates and survey map. Therefore what was now proposed was that the Collector should be bound to keep these copies in the Collectorate open for the inspection of all interested. This would be sufficient to enable parties interested to know what was proposed to be done.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE said he would much rather allow Section 5 to stand as it was. He thought it necessary that landholders and others interested should have sufficient time and full opportunity to examine the estimates and specifications as well as to consider the details; that could not be done by a casual inspection of these papers by some agent. It must be considered that as the zemindars and other landholders would have to meet the expenditure, it would be but fair that they should have the opportunity of thoroughly considering the nature of the works proposed. If the Hon'ble Member, however, pressed the amendment, Rajah Joteendro Mohun Tagore would say that the following words should be added:—"Provided that each interested person shall be furnished with copies of the same free of charge on application made on plain paper."

THE HON'BLE MR. SCHALCH observed that the objection of the Hon'ble Member would be met if we added the words "who shall be allowed to take

copies thereof:" in the one case there would be no charge; in the other, if copies were given, the charge would go to the general expenses.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE remarked that if the persons interested were to make copies for themselves, there would be no necessity, he imagined, of providing for it under the law.

HIS HONOR THE PRESIDENT said it seemed to him that the preparation of these copies of plans and specifications might be an expensive and elaborate thing, and the number of persons interested might be very numerous, and it might lead to a prodigious charge if every such person were to be supplied with copies. On the other hand the persons interested might take rough copies sufficient for their purposes. Therefore he would prefer not by law to throw the charge upon the scheme: it would lead to great complications and great expense.

THE HON'BLE RAJAH JOTEENDRO MOHUN TAGORE observed that as the sense of the Council appeared to be against him, he would withdraw the amendment which he had proposed.

THE HON'BLE MR. SCHALCH'S amendment, with the addition proposed by him, was then agreed to.

The HON'BLE MR. SCHALCH said the next amendment of which he had given notice referred to a question which he kept in abeyance at the last meeting. It was in substitution of the amendment which he had proposed in Section 64, now Section 58. By that amendment we proposed that all the powers and authorities vested in the Collector under Section 4 of the Act might be delegated to the Engineer. It was now proposed, in lieu of that amendment, to move that Section 58 be omitted altogether, and that the following new section be inserted after Section 9:—

"All the powers vested in the Collector by Section 4 of this Act may be exercised by the Engineer in cases referred to him by the Collector, subject to the general orders of the Collector."

The amendment referred merely to the powers vested in the Collector by Section 4, and it would be seen that none of those powers could be exercised by the Collector himself until after full promulgation and a judicial inquiry. The whole question as to whether the measures to be carried out were expedient or otherwise must have been discussed and decided previously to that power being delegated, and all that remained to be done would be the mechanical and professional question as to how the work was to be carried out. Therefore the mere professional execution of the work would be the power that would be delegated; there were no other powers which would be concerned.

The motion was agreed to.

On the motion of the HON'BLE MR. SCHALCH, verbal amendments were made in Sections 25, 34, 35, and 38.

The HON'BLE MR. SCHALCH moved that the words "or to both," at the end of Sections 51, 53, and 54, be omitted. As the Bill stood, offences under these sections were punishable with imprisonment or fine not exceeding two

hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding six months, or with both. This he proposed to alter in relation to the Code of Criminal Procedure. It was thought at the time that as the offences punishable under these sections were not punishable offences within the provisions of the Penal Code, they might be allowed to stand as they were. But by the last amendment of the Code of Criminal Procedure (Section 309) all offences under any Act for the time being in force were brought under its provisions, and the Code did not now, as before, apply merely to offences under the Penal Code. It was now found that in the case of offences punishable by imprisonment as well as fine, if a fine only were imposed the commutation in lieu of payment of the fine could extend to six months; but if fine were imposed in addition to imprisonment, the commutation could only extend to one-fourth of the term of imprisonment. Therefore, the limit of imprisonment under these sections being six months, if the fine imposed in addition to imprisonment were not paid, the limit of punishment in commutation of fine would be one and a half month, or one-fourth of the term of imprisonment. This would happen in the case of fines imposed in addition to imprisonment under Sections 51 and 54 of the Bill; but in sentences passed under Section 53, the limit of imprisonment in lieu of the payment of the fine would be one week, the limit of imprisonment under that section being one month. It was therefore proposed to rectify the error by omitting the words "or to both" from these three sections. If, on the other hand, it was desired to retain the power of inflicting both fine and imprisonment, the object would be effected by omitting the words "commutable, if not paid, to a period of imprisonment not exceeding six months," as the Procedure Code provided for commutation without any specific period of commutation being mentioned in the Act. But MR. SCHALCH thought the better way would be, considering the nature of the offences provided for by these sections, to rectify the error by omitting the words "or to both."

HIS HONOR THE PRESIDENT said it was clear enough that these sections as they stood were illegal, but the words that made these sections illegal were the words "commutable, if not paid, to a period of imprisonment not exceeding six months," because under the general provisions of the Code of Criminal Procedure the fine here imposed would only be commutable to one and a half month's imprisonment. The Hon'ble Member in charge of the Bill proposed to obviate the difficulty in another way, but without looking more minutely into the matter HIS HONOR could not say whether what was proposed was sufficient.

THE HON'BLE MR. ROBINSON said it seemed to him that the provisions of these sections applied the same severe penalties to a great variety of offences. He should like to know, for instance, if it was intended that any person who caused or permitted any cattle to graze upon any embankment was to be liable to a fine of two hundred rupees or imprisonment for six months. As he understood the amendment, there was to be an alternative of imprisonment or fine; but even if the fine only were imposed, it was to be commutable to

imprisonment for six months. That seemed a very severe punishment to inflict upon every old woman who permitted a goat to graze upon an embankment.

The Hon'ble Mr. Schalch said it must be remembered that we had to provide not only for the case of the old woman with the goat, but for the very common offence of the villagers tying their cattle to graze upon embankments by hundreds. Any Engineer would tell you that nothing was more injurious to an embankment than to have cattle grazing upon it; they made holes in it, which led to rats and other vermine undermining and destroying the embankments. In providing an amount of punishment for any offence, we must suppose that the officer to whom the power was entrusted would exercise a proper discretion. We must not suppose that he would impose a fine of two hundred rupees upon every old woman who permitted her goat to graze upon an embankment. The fine of two hundred rupees was put as a maximum.

His Honor the President observed that there was no class of Her Majesty's subjects with whom he had greater sympathy than the old women with the cows. Engineers were hard-hearted on that subject, and he had been trying to mitigate their persecution of these old women. But we trusted to the discretion of the Judge or the Magistrate passing sentence under these sections. One result of these provisions would be to prevent the Engineers from taking the law into their own hands. Our object now was to get the Bill into shape in a way in which it might be considered by those interested. Anything like a substantive amendment would be better considered a couple of months hence. Perhaps these sections might be allowed to pass now with the understanding that it would be open to the Hon'ble Member when the Bill came up again for consideration to propose any amendment he might think fit.

The Hon'ble Mr. Robinson said he believed he was right now in supposing that offences under these three sections might be punishable with fine or imprisonment and not by both. He thought, however, that some distinction should be made between trivial offences and those of a more serious nature.

The motion was then agreed to.

The Hon'ble Mr. Schalch moved that in Section 59, after the word "Collector," in line 1, the words "in respect to applications under Section 4, Clauses 6 and 7, or," be inserted. He said this was in effect the amendment to be moved by the Hon'ble Member opposite (Baboo Digumber Mitter). He had not at first understood the reason which induced the Hon'ble Member to bring it forward; because as this section gave a power of appeal from all orders passed under Section 8, and those referred to Section 4, the appeal he desired to have was already given. But it would be observed that Section 8 proceeded upon Section 5, and Section 5 again gave the Collector power under Section 4. Therefore, when an application was made under Section 4 for the opening of a sluice, or for a new embankment or drainage work, the Collector might say, "I do not think it expedient," and do nothing, and thus there would be no order under Section 8, and therefore the party making the application would have no power of appealing. The Hon'ble Member opposite thought there was still something wanting, because it might happen that when the Collector received an application under Clauses 6 or 7, he might pass no order. But Mr. Schalch said that

whenever a petition was presented to the Collector an order of some kind must be passed, either that he won't do it, or that it would be done, or that the application should be filed, and on such order an appeal would lie under Section 59 as now proposed to be amended.

THE HON'BLE BABOO DIGUMBER MITTER said, the amendment moved in respect of Section 59 by the Hon'ble Member in charge of the Bill would substantially meet the object aimed at by the amendment which stood first in Baboo Digumber Mitter's notice of amendments. Some verbal alterations, however, would appear to be needed in Clauses 6 and 7 of Section 4, and in Section 5 as well, to make the different sections of the Bill consistent with each other, and to prevent any possible misconception in future as to the intention of the legislature on the subject. As the clauses now stood, the Collector might not pass any order on the application for works mentioned in them, and unless an order was passed there could be no appeal under the amended Section 59. In fact the clauses were intentionally so framed, inasmuch as the orders to be passed in reference to applications for works mentioned in them, as in the other clauses of the same section, were provided for by the general Section 8. But as exception was made in regard to Clauses 6 and 7 by the amendment proposed to be introduced in Section 59, those two clauses should be made quite independent of Section 8, and towards that end he would move—

First.—That at the end of Clause 6 be inserted the words "and he shall pass orders accordingly;" and

Secondly.—That at the end of Clause 7 be inserted the words "the Collector shall pass such order upon the application as may appear to him fit."

THE HON'BLE THE ACTING ADVOCATE-GENERAL observed that Clauses 6 and 7 of Section 4 did not say what the Collector was to do on receiving applications under them, or that he was to do anything. The other clauses provided what action the Collector was to take. But Clauses 6 and 7 were vague.

THE HON'BLE MR. SCHALCH said there was one unanswered objection to the amendments proposed, that they would have the effect of taking away applications under Clauses 6 and 7 of Section 4 from the procedure under Section 5. If you used the words proposed, the Collector might at once dispose of the matter without subjecting it to the procedure provided in Section 5, that was to say without issuing a proclamation and without holding a judicial inquiry.

HIS HONOR THE PRESIDENT suggested that in lieu of the words proposed by the HON'BLE BABOO DIGUMBER MITTER, the words "The Collector shall decide whether it is expedient that such application shall be granted" be added to Clauses 6 and 7 of Section 4. If that were adopted, then the whole of the clauses of Section 4 would be covered by Section 5.

THE HON'BLE BABOO DIGUMBER MITTER having accepted the amendment—

The motion was agreed to, as well as the HON'BLE MR. SCHALCH's amendment to Section 59.

On the motion of MR. SCHALCH, for the words "herewith submitted" in Clause 2 of Schedule A, the words "open for inspection by any interested person at this office, who is allowed to take copies thereof," were substituted.

THE HON'BLE BABOO DIGUMBER MITTER said, in moving the amendment which stood second in his notice of amendments, he thought he was simply pointing out an oversight on the part of the Hon'ble Member in charge of the Bill, rather than supplying an intentional omission. He need not tell the Council that it was for the protection of certain properties guaranteed to be protected by the State that the embankments mentioned in Schedule E (now D) were maintained. It was true that owing to a change in the course of a river or other causes some of those embankments might cease to be needed, and provision was therefore very properly made for their abandonment and exclusion from the Schedule. But it was equally true that necessity would always arise for the erection of new lines of embankment for the protection of the very properties which the embankments included in Schedule E were intended to protect Some of the new embankments, the erection of which was provided for under Part II of the Bill, must come under that class, viz. embankments needed for the protection of lands hitherto protected by the State embankments. It was but bare justice therefore that the cost of such embankment should be borne by the State.

He begged therefore to move—

In Section 34, after "annexed" in line 5, insert the following:—"nor to such embankments as may hereafter be erected for the protection of lands which at the time of the passing of this Act are protected by the embankments mentioned in the aforesaid schedule."

THE HON'BLE MR. SCHALCH said it appeared to him that the object which the Hon'ble Member sought to attain by the amendment he proposed was already provided for under the Act. There were certain embankments which the Government had undertaken to keep up at their own expense. If any of these embankments became useless, and if it was found necessary to construct another embankment to protect the lands protected by the embankment which had become useless, the Government would undertake to construct and maintain such embankment; and MR. SCHALCH was therefore perfectly willing to accept the amendment on that understanding. But it might possibly be that a new embankment constructed in the place of an old embankment might protect not only the lands protected by the old embankment, but might extend protection beyond those limits; and as the Hon'ble Member's amendent stood, the persons so newly benefited would be exempted from all charge for such embankment. That such protection might be afforded by the construction of new embankments in the place of old ones was not only possible, but very probable. Therefore MR. SCHALCH would move the following amendment in lieu of the amendment proposed by the Hon'ble Member, that the first paragragh of Section 34 be amended so as to stand thus:—

"The provisions in this Part contained shall not apply to any of the embankments mentioned in Schedule (D) to this Act annexed, save so far as any works or repairs are executed therein or in relation thereto under the provisions of Section 4, Clause 7, or Section 19 of this Act, or to any of such embankments as may hereafter be erected for the protection of lands which at the time of the passing of this Act are protected by the embankments mentioned in the aforesaid Schedule, save so far as the erection of such

embankments may protect lands not protected by the embankments mentioned in the aforesaid Schedule All sums payable in respect of any works or repairs executed therein, or in relation to the embankments mentioned in the aforesaid Schedule, except under the provisions of Section 4, Clause 7, or Section 19 of this Act, shall be paid by the Government"

THE HON'BLE BABOO DIGUMBER MITTER having accepted this amendment in lieu of the one proposed by him—

The motion was agreed to.

THE HON'BLE BABOO DIGUMBER MITTER withdrew the third amendment of which he had given notice.

ADJOURNMENT OF THE COUNCIL.

HIS HONOR THE PRESIDENT said it would be convenient not to carry the discussion of the Bill further at the present time, but that the Council should be adjourned, and then after an interval of not less than two months we should revert to the consideration of the Bill. He should in all probability not have occasion to ask the Council to meet again for at least two months. He might say that unless there were any emergency he did not propose to re-summon the Council 'till after the vacation of the Courts was completed,—till the end of the long vacation. He had to thank the Members very much for all their labors, and would adjourn the Council until further notice. He proposed that the two Bills under consideration that day should be re-published in order that full consideration might be given to them by the public before the Council met again.

The Council was adjourned *sine die.*

[*This leaf to be cancelled on the issue of Part II*

Saturday, the 29th November 1873.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul,
The Hon'ble V. H. Schalch,
The Hon'ble H. L. Dampier,
The Hon'ble C. E. Bernard,
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor,
The Hon'ble Baboo Digumber Mitter,
and
The Hon'ble B. D. Colvin.

POWERS OF MAGISTRATES.

The Hon'ble Mr. Dampier moved for leave to bring in a Bill to amend Act XXI of 1856 of the Council of the Governor-General and Act II of 1866 of the Council of the Lieutenant-Governor of Bengal. He said this Bill had been published by the order of His Honor the President, according to the rule of the Council in that behalf, in anticipation of the Council's permission to introduce it. It was merely a technical Bill. As the thing stood, the Abkari Laws and the Suburbs of Calcutta Law, Act II of 1866 of this Council, restricted the powers of Magistrates in a certain way as regards offences under those special laws. He had nothing more to explain in regard to this Bill than what had been expressed in the Statement of objects and reasons. The object was to assimilate the trial of these offences, as regards the tribunals before which they should be tried, with the general scheme of the Criminal Procedure Code.

The motion was agreed to.

The Hon'ble Mr. Dampier applied to the President to suspend the Rules for the conduct of business to enable him to move that the Bill be read in Council.

His Honor the President said it was doubtful whether it was necessary to suspend the Rules in regard to this Bill. The principle of the Rules seemed to be, ordinarily, that a Bill should not be read in Council unless it had been for three days in the hands of the members. Under the authority vested in the President, this Bill had been published in the *Gazette*, and it had been in the hands of the members for more than three days. In order, however, to obviate any doubt as to whether there had been a sufficient compliance with the Rules, and in order to relieve the District Officers from work of the nature to which this Bill referred as soon as possible, he would suspend the Rules.

The Hon'ble Mr. Dampier then moved that the Bill be read in Council.

The motion was agreed to.

The Hon'ble Mr. Dampier moved that the Bill be referred to a Select Committee consisting of the Advocate-General and himself: this being a merely technical Bill, he would not trouble Hon'ble Members to sit in committee.

The motion was agreed to.

MAHOMEDAN MARRIAGE AND DIVORCE REGISTRATION.

THE HON'BLE MR. DAMPIER moved for leave to bring in a Bill to provide for the voluntary registration of Mahomedan marriages and divorces. He said this Bill, like the last one, had been published by special order of His Honor the President, and it had been in the hands of members for more than three days. Hon'ble Members were aware that we found in this country, as an established institution, certain Mahomedan functionaries known as Cazees. They were recognised by our law, Regulation XXXIX of 1793, which recited:—

"Cazees are stationed at the cities of Patna, Dacca, and Moorshedabad, and the principal towns, and in the pergunnahs, for the purpose of preparing and attesting deeds of transfers and other law papers, celebrating marriages, and performing such religious duties or ceremonies prescribed by the Mahomedan law as have been hitherto discharged by them under the British Government, and also for superintending the sale of distrained property and paying charitable and other pensions and allowances, under Regulations XVII and XXIV, 1793 The nature of the above-mentioned duties renders it necessary that persons of character, and duly qualified with respect to legal knowledge, should be appointed to these offices, and to encourage them to discharge their trusts with diligence and fidelity, they should not be liable to removal unless proved to be incapable or guilty of misconduct to the satisfaction of the Governor-General in Council"

And then the law provided that the Governor-General in Council should make the appointment, and that the cazees should not be removable except under his sanction. It was also provided by Section 7 that—

"The head cazee and the cazees stationed in the cities, pergunnahs, and towns, are to keep copies of all deeds and law or other papers which they may draw up or attest, and are to affix thereto their seals and signatures They are likewise to keep a list of all such papers, and in the event of their death, resignation, or removal, the list and papers are to be delivered complete to their successors."

Things remained pretty well in this state until the year 1859, when a discussion began which led to the passing of Act XI of 1864, which abolished the office of cazee by a stroke of the pen as being unnecessary. In 1859, in the course of that discussion, Sir John Peter Grant, whilst recommending the repeal of the regulation, suggested that the repealing Act should constitute the office of cazee on a proper footing as that of a Mahomedan marriage registrar. It was pointed out that there was nothing of the nature of a religious ceremony in a Mahomedan marriage, and it was observed that as Mahomedans had by law the power of marrying by civil contract, and an office, which must be held by a Mahomedan, had been created for the legal record of their marriages, it would not be a just or decorous act substantially to abolish that office.

That advice was not adopted; and no trace appeared of it in Act XI of 1864, which abolished the office of cazee. In recent years the want which was anticipated by Sir John Grant had begun to be realized in practice. The question had been judicially tried, and it had been settled that there could be no legal cazee according to the Mahomedan law, unless the officer were appointed by the Sultan or ruling power. Therefore the effect of the passing of the law of 1864 was practically to do away with the Mahomedan functionary altogether. No person could be appointed by the Mahomedan community

whose appointment would be valid under the Mahomedan law. Some two years ago it was noticed that offences against marriages were increasing amongst the Mahomedans, especially those of the lower classes. Many charges were preferred, but as a general rule the complainants failed to obtain redress from the courts. On analysing the causes it was found that one great moving cause was the want of any functionary to take the place of the old cazee as regards Mahomedan marriages. No recognised authority acceptable to the community concerned was competent authoritatively to attest marriages and similar contracts. Since the abolition of cazees marriages were performed in the presence of casual witnesses only; and the proof of the marriage depended on the evidence of such witnesses only. Therefore when these cases were brought and the court insisted, as our courts must do, on legal proof of the marriage, none was forthcoming which satisfied it. The testimony of the witnesses was either not forthcoming, or was met by counter evidence which threw doubt on it.

So again with regard to divorces. Sometimes when a marriage happened to be proved, it was met by the plea that the wife had been repudiated according to the forms which the Mahomedan law required. Here again a question of fact arose in regard to which it was often impossible to satisfy the courts.

The object of the Bill was not in any way to interfere with the existing customs, ceremonies, and injunctions of the Mahomedan law and Mahomedan society, but was merely to give those who wished it a safeguard against those questions of the fact of the marriage or divorce being raised in issue,—to give them in fact a popular means of registering the evidence of such acts, which evidence should be accepted by the courts *primâ facie* as authoritative. There was to be no compulsion; and even in the matter of fees the Bill did not attempt to interfere between these Mahomedan registrars and those who voluntarily went to them to register the fact of particular marriages and divorces taking place. The opinions of the law officers and other gentlemen who had been consulted were nearly unanimous that such an opportunity of voluntarily registering marriages and divorces should be given. MR. DAMPIER hoped the Council would allow him to introduce the Bill.

HIS HONOR THE PRESIDENT said before he put the question he wished to say one or two words. The object of the Bill, and the reasons which induced the Government to devise such a Bill, had been very clearly stated by the Hon'ble Member. He might say that this was a humble attempt to deal with a great and difficult subject. The difficulty was one which had been felt for many years past. It was one with which he had had occasion to deal in several capacities, and he had for many years had much doubt as regards the solution to which it would be possible to arrive. This Bill was the outcome of a good deal of consideration on the subject. His own feeling had been that it was a doubtful question whether it was or was not advisable to abolish the old cazees; but he had felt and expressed the opinion that once they were abolished it would be impossible to the British Government to restore them in their old form. If we attempted to restore the cazees, we would be attempting to restore a Mahomedan officer whose office had many peculiarities and many

incidents connected with the Mahomedan law and the Mahomedan religion. The British Government would have great difficulty in establishing such officers. His Honor also felt this additional difficulty, that in the Mahomedan religion, as in most other religions, there were various sects, and if we attempted to set up cazees we should be beset with the difficulty from which sect were we to choose, or whether we were to choose cazees from amongst all the sects. That being so, and the question of the re-establishment of cazees being involved in great difficulty, his feeling, and that of the Hon'ble Member in charge of the Bill, had been to confine themselves to the one practical and immediate want before them—to provide a means of registering Mahomedan marriages and divorces. The Mahomedan law seemed clear on this point, that the celebration of these most important social contracts and de-contracts must be conducted by officers appointed by the ruling power; it was not essential that he must be a cazee. The best solution therefore would be to meet in practice the want that had arisen by appointing officers on the part of the ruling power who were authorized to perform these acts. His Honor at one time thought that if the ordinary registrars of deeds were authorized to register Mahomedan marriages and divorces, it would meet the requirements of the Mahomedan community. But to that course it was found that there were objections. The men most fit and most acceptable to the Mahomedans would be the men whom they themselves would choose to register these contracts; and we now believed that it would be more acceptable to the Mahomedans that they should have special registrars for the purpose. In that view we had devised as an expedient this Bill, which went no further than to appoint a marriage registrar to whom the parties might apply. We had not touched the substantive law. The registrars would only register the contract, and leave it to the ordinary law to decide what validity those contracts had. We had taken for our guide the Christian Marriage Act. Amongst Christians there were several sects, and the policy of that law had been to enable any minister of any sect to celebrate marriages. We had adopted the same essentials as regards Mahomedan marriages. We had said that Mahomedans might have their own registrars who should perform the marriage ceremonies and register the contracts. All we proposed was that those who had hitherto performed these offices, and who were respectable and versed in the Mahomedan law, should receive licenses to ply that trade, and ply it so far as their co-religionists saw fit to employ them for that purpose.

The motion was agreed to.

The Hon'ble Mr Dampier applied to the President to suspend the Rules for the conduct of business to enable him to move that the Bill be read in Council.

His Honor the President said this was not a Bill which the Government wished to hurry; but as the Bill had been for some days in the hands of members, it would be a mere useless ceremony to postpone the motion that the Bill be read in Council to another day, and on that account he would suspend the Rules so far as was necessary to proceed with the Bill to the next stage.

The Hon'ble Mr. Dampier then moved that the Bill be read in Council.

The motion was agreed to.

The Hon'ble Mr. Dampier moved that the Bill be referred to a Select Committee consisting of the Hon'ble Moulvie Abdool Luteef, the representative of the Mahomedan community in this Council, the Hon'ble the Advocate-General, and the Mover, with instructions to report in a month. This Bill had been prepared, under the instructions of His Honor the President, in the Executive Department of the Government, and was handed over to Mr. Dampier in that stage. He might mention that it appeared to him that it would be necessary to make considerable alterations in it in committee.

The motion was agreed to.

EMBANKMENTS AND WATER-COURSES.

The Hon'ble Mr. Schalch moved that the Bill to amend the law relating to embankments and water-courses be further considered in order to the settlement of its clauses. He said it would be in the recollection of the Council that this Bill was taken into consideration a short time back and its final clauses settled on the 13th of September last. It was then ordered to be printed and published in order to give parties interested a final opportunity of submitting any representations they might wish to make. No representations had since been received; but he had taken advantage of the interval carefully to go through the provisions of the Bill, and the result of that scrutiny had been that he had to move four amendments, which he would do *seriatim*.

The motion was agreed to.

The Hon'ble Mr. Schalch said the first of the amendments which he had to move referred to Section 4, Clause 5. The object of the clause was, where it was found after a road had been constructed that the drainage of the country was impeded, to give power to alter that road and make a water-course for the proper drainage of the surrounding lands. By the clause as it stood, the expense of so doing was thrown entirely on the road, whether the impeding of the drainage was caused by insufficient provision being made at the time of the construction of the road for the natural drainage then existing, or whether the impediment to the drainage resulted from causes arising subsequently to the construction of the road.

It seemed fair that if the road when constructed did afford proper means of drainage, the expense should not fall on the road, but on those who would benefit by the alteration required by the contingency which had afterwards arisen. He therefore proposed to throw the cost upon the road only where it was proved that at the time of the construction of the road sufficient provision for drainage had not been made, and in all other cases to levy the cost rateably under the general provisions of the Bill amongst those who would benefit by the alteration. With this view he moved to add to Clause 5 of Section 4 the following words:—

"So far as the same shall have been incurred on account of insufficient provision having been made at the time of the construction of the said road for the natural drainage then existing."

The motion was agreed to.

The Hon'ble MR. SCHALCH said the second amendment he had to propose was in Section 5. It was there prescribed that a copy should be prepared of the survey map showing the boundaries of the estates to be affected by the work proposed. The survey maps were made, not by estates which very often comprised a large area with scattered villages, but by mouzahs, and it would not be possible to give a survey map of the estates to be affected. He would therefore move that the words "of the villages" be inserted after the word "boundaries" in line 7 of Section 5.

The motion was agreed to.

On the motion of the Hon'ble Mr. Schalch a similar amendment was made in paragraph 2 of Schedule A.

In Section 19, relating to railroads, an amendment similar to that carried out in Section 4, Clause 5, was made on the motion of Mr. Schalch.

The Hon'ble MR. SCHALCH said the last amendment he had to propose was in Section 31. By that section no claim to compensation could be entertained which was made later than one year next after the completion of the work by which any right was injuriously affected. It was thought that as this was an ultimate proceeding, and there was no appeal to the Civil Court, and it might not be easily ascertainable within one year after the execution of a work what rights were injuriously affected, it would be better to allow a longer period for the preferring of such claims. It was therefore proposed to extend the period allowed from one year to two years; and he accordingly moved that the word "two" be substituted for "one" in line 2 of Section 31.

The motion was agreed to.

The Hon'ble MR. SCHALCH then moved that the Bill be passed. As he had already stated, the Bill since its last amendment had now been before the public more than two months. No representations had been made during that time, and the alterations which had just been proposed and made were not of any great importance. It would therefore be quite within the Rules if the Bill were now passed without further delay.

The motion was agreed to.

EMIGRATION TO THE LABOR DISTRICTS.

HIS HONOR THE PRESIDENT said the Council had now concluded the business for that day, but before adjourning to next Saturday, he would intimate that, having in pursuance of his promise consulted the Government of India in regard to the circumstances which might affect our course with respect to the Labor Districts Emigration Bill, the Government of India had informed him that there was a probability that the proposal for separating Assam from Bengal might soon be carried out if Her Majesty's Government should think fit to approve of the proposal. The Government of India further went on to say that "as regards the Labor Districts Emigration Bill the Government of India think it desirable, after the careful consideration that has been given in the Legislative Council of Bengal to the Bill, that it should be passed in that Council, and not transferred to the Government of India."

That being the opinion expressed by the Government of India, and it being not improbable that within a short period Assam and the other adjoining districts might be separated from Bengal, His Honor thought the Council were bound to proceed with the Bill as fast as they safely could. Very great difficulty would arise if those districts were separated from Bengal before the Bill was passed. He therefore proposed to bring on the Bill again for consideration at the next meeting.

The Council was adjourned to Saturday, the 6th December next.

Saturday, the 6th December 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General,*
The Hon'ble V. H. SCHALCH,
The Hon'ble H. L. DAMPIER,
The Hon'ble LORD ULICK BROWNE,
The Hon'ble C. E. BERNARD,
The Hon'ble T. M. ROBINSON,
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR,
The Hon'ble BABOO DIGUMBER MITTER,
and
The Hon'ble B. D. COLVIN.

EMIGRATION TO THE LABOR DISTRICTS.

THE Hon'ble the ADVOCATE-GENERAL moved that the report of the Select Committee on the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract labor and service, be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was put and agreed to.

The Hon'ble the ADVOCATE-GENERAL also moved that the clauses of the Bill be taken into consideration in the form recommended by the Select Committee.

The motion was put and agreed to.

HIS HONOR THE PRESIDENT said that the first amendment on the paper stood in his own name. He said one, because, although the amendments were put in a tripartite form, they were really one. Before coming to the specific amendment, he might say one or two words as regarded the general position of the question. On the last occasion he had explained to the Council why it was desirable that this Council should deal with this Bill, and not leave it to be afterwards dealt with by another Council. He might add that the unfortunate scarcity which now prevailed, and the probability that many people would seek relief by emigration, rendered it peculiarly

desirable that this Bill should be settled as soon as possible; and, therefore, he was quite sure that he should carry them with him when he asked the Council to apply to it their best energies. We should do what we could to make it a Bill that would really subserve the purposes for which it was intended. Perhaps he was going a little beyond the amendment before the Council; but he should like to allude to another amendment which was at one time upon the paper, but had since been removed. The Bill had now been for a very considerable time before the Council, and we owed to a committee of the Council, who were good enough to bestow upon it great care and great labor, that it had been put into mature shape; it would be, he believed, a great improvement upon the previous law, and also a great improvement upon the Bill as it was originally placed by the Government before the Council. The state of matters was this:—At our last meeting the question of the further amendment of the Bill was narrowed to two or three questions, which he had then submitted to the Council. The first of the proposals, which was then put upon the paper in his name, was that which no longer appeared upon the paper, namely this, that the districts of Cachar and Sylhet should be removed from the list of labor districts and taken out of the operation of this Bill. Well, he would explain to the Council why we thought it right to give up that amendment. We had consulted the officials, the planters, the coolies, and other persons interested in the matter, and we found that opinions were far from being unanimous. So far as Cachar was concerned, he might say that a great majority of the planting interest were opposed to the entire excision of that district from the operation of the Bill. As regarded Sylhet, he thought the result of our inquiries was that the majority of the limited number of planters interested in that district were favorable to its being removed from the Bill. Still there were planters connected with that district, whose gardens were at remote and difficult situations, who were not in favor of the omission of Sylhet. The Commissioner of the Division, on considering the whole question, had thought fit to recommend that Sylhet should not be removed from the operation of this Bill. Taking, then, into consideration that it would not be possible to give a more prolonged consideration to this part of the question, and that it would be rash to act in this matter in a hurry, the Government had come to the conclusion that the time had not arrived to ask this Council to remove Cachar and Sylhet altogether from the operation of this Bill. His Honor was inclined to believe that things were tending that way. He was inclined to think that, sooner or later, that result might be attained. But in the meantime we did not propose to ask the Council to remove these districts from the operation of the Bill.

His Honor now came to the amendments which still stood in his name. If the Council would allow him, he would take them in somewhat the reverse order in which they stood with regard to the numbering of the sections upon the notice paper. He proposed that Sections 15, 16, and 17, which rendered a penal offence the recruiting of laborers otherwise than under this Act, should be expunged from this Bill. We propose to say—We will no longer send you to jail for recruiting in the ordinary manner and under the ordinary law, and not under the special Act. That was a proposal which he thought no one would

object to. The gentlemen of the tea interest would no doubt be content that they would not be liable to punishment for recruiting outside the law. The result of the simple excision of these clauses would be to render lawful ordinary contracts for labor otherwise than under the Act. But we had considered that, seeing the caution that was necessary before people could be bound down to serve for long periods in countries and under conditions that were unknown to them, it would not be desirable to go so far as that. On a former occasion he had indicated to the Council that we might take for example the plan that had been adopted by the Government of India with regard to a Bill before the Legislative Council of India, with respect to British Burmah. The proposal that was made by the Hon'ble Member in charge of that Bill was that there should be no penal clauses to interfere with free emigration, but simply a clause to provide that no contract shall be binding upon a laborer unless it was made in accordance with the Act. Well, so the matter stood when the question was last before them; but since he had last addressed the Council regarding this Bill, a considerable change had taken place in consequence of the unhappy scarcity which afflicts the country at present, and which threatens to afflict it in the future. As he had said, the Government thought it probable that emigration might take place largely in consequence, and the Government had also indicated a desire to assist emigration as far as possible.

The Government had further suggested that persons who might be assisted to emigrate under this Bill, might fairly be expected to contract for one year, one year being the term for free labor contracts usual in the tea districts.

Accordingly the Members of the Government had decided to propose for the consideration of this Council the clause which stood in his name, and which was as follows:—"No contract to labor in the labor districts for more than one year shall be binding upon an emigrant unless it is made in accordance with this Act; and no emigrant shall be bound to fulfil any contract of labor upon any estate or portion of an estate which has been declared unfit for the residence of laborers under the provisions of Sections 119 and 120." He might explain that the latter part of this section was one which had been added for a reason which he thought the Council would consider very sufficient, namely this, inasmuch as these contracts were made by an emigrant before he reached the labor districts, it would not be fair and just that he should be forced to perform that contract in an estate which had been declared unfit for residence. Therefore he had no doubt the Council would consider that we had justly inserted this clause.

Well, then, the only question which really required the full consideration of the Council was this, whether a system of free labor contract outside the provisions of the Act should be allowed in these labor districts, or not. On that subject we were in the possession of a number of valuable opinions. He thought he might say the great majority of these opinions was in favor of the proposal which he had now submitted to the Council. He admitted, however, that there were some variations in the opinions we had received direct. First, there was the opinion which was received from Messrs. Young, Gray & Co.,

who looked upon the proposals of the Government as admirable, and would like to see them carried out entirely; then another from Balmer, Lawrie and Co., who took another view, and said—"We think it is desirable to let well alone;" then another gentleman, Mr. S. H. Robinson, who was strongly in favor of the free system of recruiting; then we came to another gentleman, Dr. C. W. Turner, who was of an opposite opinion, and did not think the free system was good. His Honor now came to more important documents, namely, the reports of the Commissioner of the Dacca Division and the Deputy Commissioner of Cachar, and the Magistrate of Sylhet, who had fairly collected and reported the opinions of the planters consulted, the opinions of the coolies consulted, and their own opinions. The result of these inquiries seemed to show that there was a very great majority of opinion in favor of permitting free recruiting. The Deputy Commissioner of Cachar tells us that he finds that in that district "the possibility of carrying out free recruiting side by side with the Coolies' Act is maintained by a large majority of the planters. Very few only have doubts about it."

"9. In the matter of free emigration side by side with an Act, the general opinion of the planters, as far as expressed, is quite in favor of it; and the possibility of carrying it out side by side with the Coolies' Act is maintained by a large majority; a very few only have doubts on the subject.

Many planters characterize it as a great boon, whilst one gentleman of well-known influence informs me that he has always been averse to any special Acts, and is glad that signs are being now shown that before many years we shall see the last of them.

They say of course that certain remote gardens will not be able to use it for the present to any extent, but that others will avail themselves of the permission largely.

10. At the present moment there are free-recruited men working on many of the gardens; some of them, as the managers state, come up of their own free-will, paying their own expenses; others come up at the instigation of old garden coolies, who, when visiting their homes, and in some cases managesr, have recruited outside the Act.

I visited a garden lately where, according to the manager's statement, there was hardly a coolie who had been imported by the garden. * * * *

"Now, these men are as healthy-looking and contented a set of coolies as I have seen, and their lines were a model of cleanliness. * * * *

In another flourishing and well-managed garden employing over 600 coolies, I found about 360 coolies recruited or re-engaged under the Act, about 140 under civil contract, and over 100 without any contract at all.

11. In a letter this instant received, the manager of a concern with more than 300 coolies under the Act alone, says: 'I would heartily welcome a system of free recruiting, and further, I believe that free labor is possible working alongside the contract plan, and on this garden as well as on many others *there are both kinds.*' * * *

12. One gentleman alone in alluding to this subject pronounced free recruiting to be (in his case) a failure; he got up some coolies who absconded one by one, he never being able to get an agreement from any of them. Now, this exactly bears out what has been stated by me, for the garden is placed in a comparatively remote part of the district, and not far from Monierkhall, which has had an unfortunate notoriety.

Even this gentleman 'as an experienced planter,' sees no reason why the system, (*i e.*, allowing free recruiting), should not work side by side and be tried for a time at least.

13. On this point the coolies also were generally of one opinion, viz. that 'free recruiting' should be allowed. One or two individuals said that men could not be brought from Calcutta without an agreement being obtained from them

before they started, but almost all who gave an opinion alleged that a large number would come up if the movement once began; and some sirdars stated that if such permissions were granted, they would go down of their own accord and bring up coolies at their own entire risk, and not for remuneration, only for such coolies as they furnished willing to work on the garden. * * * * *

14. My own views suggesting the propriety of free emigration being allowed side by side with the Act, have been expressed before, and the present inquiries fully confirm them, and I have little to add beyond pointing out that transit of coolies under the Act is necessarily more expensive and tedious than that which would result from free recruiting. Under the latter system also men of better physique would be selected, as the present contractors have not that amount of interest in obtaining healthy and strong laborers which a garden or other recruiter would have. Men who were not robust would seldom undertake the journey of their own motion. * * * * *

Some have proposed, as a modification of the above, that the agreement should be taken from the coolie on arrival here before the local Magistrate, who would compel its execution unless the garden was unfit for habitation"

Now that was exactly what we proposed to give, and something more. We proposed to say that local contracts made with coolies who had arrived in the district were lawful; and further, that up to the limit of one year the contract may be considered as binding, though made with an emigrant before he reaches the labor districts.

In Sylhet the tendency of opinion was still more favorable to the free system; and as regarded the coolies, His Honor found that the majority of the coolies also wanted to be free, and expressed a decided opinion to that effect, always excepting one especially intelligent cooly who made this sage remark—"What does it matter to us whether there be an Act, or no Act, so long as our bellies are filled." But it was reported that it was perfectly clear that to those gardens where free labor prevailed, the coolies went much more readily.

He thought then that he might say that the opinions of officials, non-officials, planters, and coolies, were such as to show a very large balance of argument in favor of the optional free system. He thought the circumstances under which we were placed by the scarcity rendered it greatly desirable to assist laborers to proceed to the labor districts. And feeling that on the one hand it would not be fair to bind them down for too long a term, and on the other hand that if planters were to import coolies they must have some kind of contract to make a fair start, he trusted the Council would consider the amendment he had proposed as a fair compromise. He was sure they would give it a fair consideration, and would decide what they thought best. He would begin, then, by moving to omit Sections, 15, 16, and 17, that was to say, the penal clauses of the Act.

THE HON'BLE MR. COLVIN said that, as he took occasion when the Labor Transport Bill was introduced to offer a few remarks on its general scope and some of its particular provisions, and as he had since had the opportunity in respect to the greater portion of the Bill of urging in Select Committee such alterations and amendments as appeared to him expedient or essential, he need not now occupy the time of the Council for more than a few minutes. But there were one or two general considerations to which he was anxious to draw attention before referring specially to the amendments of the Hon'ble President.

He thought the Council would hear him out in believing that the anticipation which he ventured to express when the measure was first brought forward, that it would be found to involve important changes in the existing law, and to re-open the whole subject in the minds of those interested, to produce a good deal of comment and provoke a certain amount of criticism, had been fulfilled; and if at that time he had been somewhat distrustful of the effect of fresh legislation, he was now ready to admit that it had been attended with certain distinct advantages in addition to those which had been then adduced in its favor. For it had brought to bear upon the whole question a quantity of practical information and a number of valuable opinions, which had been of great service in enabling the Select Committee to frame the Bill in the form in which it was now submitted to the Council for consideration; it had also made public the declared purpose of the Bengal Government to aid and assist emigration to the tea districts, rather than to place difficulties and delays in the way; to encourage the great and growing industry of tea cultivation, rather than to burden it with any new restrictions; and further, it had placed beyond doubt that which had previously been imperfectly understood or believed, that in the great majority of instances, the relations between employers and laborers in the tea districts were consistent with the well being of the latter, and that both on the higher ground of humanity as well as on the lower one of self interest, the care of the cooly was not neglected by the planter, and that the present body of owners of gardens and planters generally might claim credit, not only for energy and enterprise in pushing their trade to its present state of prosperity through many difficulties and disappointments, but also for the strict and honorable observance of the conditions under which it had seemed good to the Government to favor the establishment and extension of the trade.

Passing on to the amendments proposed by the Hon'ble President, Mr. Colvin would say that although he had previously expressed an opinion which had then been shared in by all his hon'ble colleagues on the Select Committee, that complications were likely to arise from carrying out two separate systems of recruiting side by side, he had become on further consideration of the matter and of the opinions submitted upon it, less apprehensive of the effect of omitting the penal clauses of the Act, for he doubted whether the two systems would thereby be brought in practice into such close competition as to produce results inequitable to those who had previously been compelled to recruit solely within the provisions of the Act; that apprehension being thus to a great extent removed, he was quite ready to relinquish the ground of objection and to support the amendments of His Honor; and further he felt that being as they were almost within the shadow cast before the coming of a dreaded event in parts of the province, he could not but acquiesce in an arrangement to facilitate emigration from districts where there was likely to be lack of labor and scarcity of food supplies to places where employment and the means of subsistence were comparatively easy to obtain.

The Hon'ble President had explained to the Council why the suggestion for exempting a portion of the labor districts from the operation of the Act had been withdrawn. Mr. Colvin considered from his own knowledge of the

matter. and from the testimony of others, that the experiment would have been in Sylhet desirable, in Cachar doubtful, and in Assam dangerous, and he was quite content that it should be left to some future time to decide when and where such exemption, if any, should take effect.

His Honor the President said, before he proceeded further, he might notice that the motion went further than it was intended to go. He had described it as removing the penal clauses of the Act. He found, however, that Section 17 went further than that. If the Council would allow him to change the motion, he would so far change it as to move the omission of Sections 15 and 16 only, leaving Section 17 for a separate motion.

The motion was put and agreed to.

His Honor the President said, if the Council would allow him he would put the motion with regard to Section 17 in a somewhat altered form, namely this—Omit the first six lines of Section 17, and the words " period which," and substitute these words :—" A contract registered under this Act." Section 17 would then read in this wise:—" A contract registered under this Act shall in no case exceed the term of three years from the date of the arrival of the emigrant in the estate of his employer in any labor district. Every such contract shall be in the form in Schedule (A) annexed to this Act, and shall be reduced to writing, and shall specify the monthly amount of wages in money, the period of service, the name of the district in which the service is to be performed, and the price at which rice is to be supplied to the laborer."

The motion was put and agreed to.

His Honor the President said, he would now put the question that after Section 8, the new section, of which notice had been given, be inserted. He would read it again :—" No contract to labor in the labor districts for more than one year shall be binding upon an emigrant, unless it is made in accordance with this Act, and no emigrant shall be bound to fulfil any contract of labor upon any estate or portion of an estate which has been declared unfit for the residence of laborers under the provisions of Sections 119 and 120 "

The motion was put and agreed to.

His Honor the President said he would next propose the first clause of the amendment which stood in his name, which was a necessary sequence of the amendment which had just been passed, inasmuch as it was now possible for free laborers contracting under the ordinary law to be conveyed to the labor districts. And as it was at the same time necessary that those emigrants when proceeding to the dabor districts should be subjected to certain sanitary regulations, it was proposed to alter the term " emigrants," so that it would include both emigrants under the law and ordinary emigrants proceeding under the ordinary law. If the Council accepted this proposal, it would be necessary to revise the section of the law relating to transport. When coolies proceeded in large numbers in crowded vessels, it would be necessary to subject them to certain sanitary regulations. If the principle of our present proposal was passed by the Council, we would then proceed to deal with the transport at the next meeting of the Council. The question was—In Section 3,

Clause 6, definition of "Emigrant," add after the word "recruiter" the words "or other person," and omit the words "and has been registered as hereinafter provided."

The motion was put and agreed to.

THE HON'BLE THE ADVOCATE GENERAL said he had the honor to move that Clauses 1 and 2 of Section 125 be omitted, and that the following be inserted after the present third clause:—"Upon complaint made to a Magistrate by an employer, or any person acting on his behalf, that a laborer has deserted from his employer's service, such Magistrate may issue a summons for the attendance of such laborer, or a warrant for his arrest, and appoint a day for the hearing of the complaint without previously examining the complainant." He understood that the Hon'ble Mr. Robinson wanted further time for the consideration of this amendment.

THE HON'BLE MR. ROBINSON begged to say that he received the notice of this amendment only yesterday evening, and it involved an alteration which was of very considerable importance to planters. He recollected on a previous occasion His Honor having expressed an opinion adverse to the section as it stood; but his memory did not serve him to lead him to suppose that there was any proposal made to alter it. He thought it would be more convenient if the Council would allow the consideration of this change to be postponed.

HIS HONOR THE PRESIDENT said he was quite ready to accede to the proposition that had been made, as it seemed to be perfectly reasonable. He might say at once that it was a change in regard to which there was no doubt a great deal of difference of opinion. He found that the great majority of the planters were against a change of this kind, but the great majority of the coolies were in favor of it.

The consideration of the amendment was accordingly postponed.

POWERS OF MAGISTRATES.

THE HON'BLE MR. DAMPIER moved that the report of the Select Committee on the Bill to amend Act XXI of 1856 of the Council of the Governor-General and Act II of 1866 of the Council of the Lieutenant-Governor of Bengal, be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was put and agreed to.

THE HON'BLE MR. DAMPIER said as this Bill was a very short one, and had been some days in the hands of hon'ble members, and as the object of it was so pressing, that was to relieve the Magistrates of districts at this time of urgency from certain work which could be well done by others, he hoped the Hon'ble President would suspend the rules, and allow him to move that the clauses be considered for settlement in the form recommended by the Select Committee

HIS HONOR THE PRESIDENT said he might mention to the Council that this Bill had its origin in a case in which a Magistrate, being desired to go out into the district to do what he could to assist the people to promote irrigation with a view of saving the crops, represented that he was very much tied down by the fact that petty cases of this kind could be disposed of by him only, and that he could not refer them to any subordinate Magistrate. On looking to this

case, we found that it was really so. The Magistrates were very much tied in trying such petty cases, and we thought they should be relieved, and also on general principle that Magistrates of the second class should be entrusted with these cases. Seeing then the pressing nature of this small Bill, he thought he would not be wrong in suspending the rules, and allowing the hon'ble member to proceed with his motion. If any member should suggest any reason for delay, he would be ready to give that reason full consideration. In the meantime he would suspend the rules.

THE HON'BLE MR. DAMPIER said he had now the honor to move that the clauses be considered for settlement in the form recommended by the Select Committee. He had simply to repeat what he had said in introducing this Bill to the Council, that in the two laws which were now amended, certain special restrictions were imposed in the trial of offences against the Abkaree law and offences against the Suburban Police law as regards the grades of officers who could deal with them. Really there was no reason whatever why the powers of Magistrates of different classes should be differently restricted with regard to those particular offences than they were under the general law of the land in regard to offences in general. His hon'ble friend on the left (the Advocate-General) was very anxious that professional character should be saved by explaining that both the members of the Select Committee were of opinion that Section 2 of the Bill was absolutely unnecessary. They thought that when by Section 1 the Council had repealed the two sections of the existing laws which placed special restrictions on the powers of Magistrates as regards these particular offences, they would as a matter of course fall under Section 8 of the Code of Criminal Procedure.

Still some might raise the objection that Section 8 of the Criminal Procedure Code would only apply to offences punishable under such special laws as at the time when the Criminal Procedure Code was passed contained no distinct provision as to the Court before which the offences were to be tried. It was in order to prevent any objection being raised on this head that the Select Committee added the second clause of the Bill, which they themselves believed to be nothing more than declaratory of what the law would be if the Bill were to consist of the first section only.

HIS HONOR THE PRESIDENT said he was quite sure that the opinions of the members who had been good enough to put this Bill in shape in Committee would be quite enough for us; yet he dared say we would not be worse for having assurance doubly sure. He might mention that the effect of the alteration in the form of the Bill which the Hon'ble members of the Committee were good enough to undertake, was to make the scope of the Bill a little wider than the Government had originally intended. The proposal of the Government was to give certain powers to second-class Magistrates, whereas under the general form of the Bill as now put, third-class Magistrates would also have some powers. Still the Government felt that the proposal that was now made was in entire accordance with the spirit of the Code of Criminal Procedure, and as such we should not be wrong in adopting it.

The motion was put and agreed to.

THE HON'BLE MR. DAMPIER said it was strictly according to rule, as no Hon'ble member appeared to have any objection, to ask that this Bill should now be passed in the form in which it was presented by the Select Committee.

The motion was put and agreed to.

The Council was adjourned to Saturday, the 13th December next.

Saturday, the 13th December 1873.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*.
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble V. H. SCHALCH,
The Hon'ble H. L. DAMPIER,
The Hon'ble LORD H. ULICK BROWNE,
The Hon'ble C. E. BERNARD,
The Hon'ble RAJAH JOTEENDRO MOHUN TAGORE, BAHADOOR,
The Hon'ble BABU DIGUMBER MITTER,
and
The Hon'ble B. D. COLVIN.

EMIGRATION TO THE LABOR DISTRICTS.

THE further consideration of the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar, and Sylhet, and to regulate contract labor and service, in order to the settlement of its clauses, was resumed.

THE HON'BLE THE ADVOCATE-GENERAL said, before proceeding with the amendments of which he had given notice, he had one remark to make, namely that the amendments before the Council were necessarily due to the altered character of the Bill. By reason of the amendments adopted at the last meeting and the omission of the penal clauses against recruiting outside the Act, it became necessary to introduce the Advocate-General's present amendments. Some further amendments were also due to this, that while the Bill allowed recruiting outside the Act, it subjected emigrants above a certain number to the provisions of the transport sections.

THE HON'BLE THE ADVOCATE-GENERAL then moved the insertion of the following definitions after the definition of "employer" in Section 3:—

"'Garden sirdar' means any person authorized by certificate by an employer to engage natives of India to proceed to a labor district under a contract to be made and executed according to the provisions of this Act.

'Recruiter' means any person licensed under the provisions of this Act as a recruiter.

'Contractor' means any person licensed under the provisions of this Act as a contractor."

The motion was agreed to.

The HON'BLE the ADVOCATE-GENERAL moved the omission of Section 4. It would be seen that in lieu of this section another section would be introduced at the end of the chapter on transport; but the section proposed to be

re-enacted was not so wide as that proposed to be omitted. Under the transport sections nineteen emigrants travelling by themselves could go without restriction; consequently it was not necessary to restrict emigration in the manner in which it was done by Section 4.

The motion was agreed to.

The HON'BLE the ADVOCATE-GENERAL moved the omission, in Section 10, lines 6 and 7, of the words "for the purpose of becoming laborers," and the substitution for them of the words "for the purpose of laboring." This was a necessary consequence of the definition of "emigrant" now adopted, and the definition of "laborer," which had a technical meaning in the Bill, namely, a man who was conveyed to the labor districts under a contract under the Act. He had also a verbal amendment in line 8 of the same section, to give uniformity to the language, namely to insert the words "of India" after "native."

The motions were severally agreed to.

On the motion of the Advocate-General verbal amendments were made in Section 11.

The HON'BLE the ADVOCATE-GENERAL moved the omission of Section 13 and the substitution of the following:—

"Any employer may by certificate authorise a garden sirdar to engage natives of India to proceed to a labor district for the purpose of laboring therein for hire upon lands of which such employer is in charge, under contracts to be made and executed according to the provisions of this Act."

The section was not necessary, the penal clauses of the Bill having been abolished. But in order to render the Act more easily intelligible, he had thought it better not only to omit Section 13, but to insert the proposed new section. It would be just as well to have a key to the following chapter relating to garden sirdars.

The motion was agreed to.

The HON'BLE the ADVOCATE-GENERAL moved the omission of Sections 34 and 64. He proposed to omit the penalty imposed under Section 34 on a garden sirdar embarking emigrants without a pass on board a vessel carrying more than twenty persons. He thought one penalty on the Master of the vessel sufficient. Section 64 was an analogous section, and should also be omitted.

The motion was agreed to.

On the motion of the Advocate-General the word "duly" in the second line of Section 65, which was considered of dubious import, was omitted, and the words "under the provisions of this Act" were inserted after the word "executed."

In Section 66 the proviso in the first clause, and the words in the third clause relating to the number of persons allowed on board without a pass, were omitted as a necessary consequence of the omission of Section 34.

On the motion of the Advocate-General, Section 71 was recast so as to stand thus:—

"It shall not be lawful for the Master of any vessel, whether licensed or not, to embark any emigrants on board his vessel for conveyance to, or towards a labor district, if the total

number of persons to be carried by such vessel (exclusive of the crew, and of any garden sirdar or other person accompanying the emigrants,) exceeds twenty, unless the emigrants are furnished with a pass by the Embarkation Agent in the form set out in Schedule (E) of this Act The Master shall, on conviction by a Magistrate, be punished with fine not exceeding ten rupees for every emigrant illegally taken on board."

And the following clause, taken from the latter part of Section 64, which had been omitted, was added to the section, so as to enable Embarkation Agents to hold an examination:

"The Embarkation Agent shall not grant any such pass without a certificate from the Medical Inspector that such emigrants may be allowed to embark without danger to the health of other persons on board the vessel."

The HON'BLE the ADVOCATE-GENERAL moved the insertion, after the word "emigrant" in line four of Section 75, of the words "whose contract has been executed under the provisions of this Act." It was necessary, in consequence of the enlarged definition of "emigrant," to restrict the meaning of the word "emigrant" in this section.

The motion was agreed to. Verbal amendments were, on the motion of the Advocate-General, made in Sections 77 and 78.

On the motion of the Advocate-General the word "licensed" was inserted before the word "vessel" in the third line of Section 79, so as to restrict the provisions of the section to licensed vessels.

Section 80, which gave the Magistrate power to stop emigrants proceeding by land, was, on the motion of the Advocate-General, omitted.

On the motion of the Advocate-General the following new section was inserted after Section 97:—

"The provisions of this chapter shall not apply to domestic servants, or to any person proceeding alone or accompanied by his wife and family only."

HIS HONOR THE PRESIDENT said the first of the amendments which he had to propose was a merely verbal one. The section to which the amendment referred, Section 17, was altered at the last meeting, but it was found that the words "said labor district" were left without meaning. It was therefore proposed to insert the words "for which he is engaged" after the words "labor district" in the 10th line.

The motion was agreed to.

HIS HONOR THE PRESIDENT said it was necessary to alter Section 81 in some degree to meet the altered character of the Bill. It was not proposed that power should be given to the Magistrate to interfere with the transit of free laborers who were not proceeding in numbers exceeding twenty. It was therefore proposed to omit from the beginning of the section the words, "If in any case whatever it appears to a Magistrate expedient that any emigrant, in consequence of ill-health, should not be allowed to proceed towards a labor district," and to substitute for them the following words:—

"If it appears to a Magistrate expedient that any emigrant, whose contract has been executed under the provisions of this Act, should not be allowed to proceed towards a labor district in consequence of ill-health—"

The motion was agreed to.

His Honor the President moved the introduction of the following new section after Section 81 :—

"If it appears to a Magistrate that the health of any emigrant (other than an emigrant mentioned in the last preceding section) is such that he cannot proceed without endangering the health of those on board, he may order the detention of such emigrant."

The effect of this would be that ordinarily the Magistrate would not interfere with emigrants proceeding alone or in small parties by land. But if any free emigrant was proceeding in a crowded vessel, and his health was such that he could not proceed without danger to others, by reason of his having the small-pox or any other infectious or contagious disease, then the Magistrate might interfere, and if his condition was such as to be dangerous to the health of others, the Magistrate would be bound to detain him.

The motion was agreed to.

His Honor the President moved that in Section 82, the words and figures "Section 81" be substituted for the words and figures "Sections 79, 80, or 81." Section 80 had been omtited from the Bill; Section 79 referred only to the detention of vessels, and did not involve any extra expense, and the new section which had been added we did not propose to bring within the purview of Section 82. Accordingly if the Council would accept this amendment, Section 82 would read thus :—

"All expenses incurred under Section 81 by a Magistrate, or other officer deputed by him under the provisions of Section 93, in respect of any emigrant so detained (that is in regard to contract coolies), shall with interest at six per centum per annum be recoverable by him from the contractor by whom the emigrant has been engaged or forwarded, or, in the case of an emigrant engaged by a garden-sirdar, from the employer from whom such garden-sirdar received his certificate."

The motion was agreed to.

His Honor the President said he had now to move a series of small amendments which were merely intended to carry out the object of the amendments already made, and to restrict the operation of certain provisions of the Act to those particular emigrants whose contracts were made under the Act. The following amendments were then agreed to :—

Section 85.—In line 15, omit the word "such," and after "emigrants" insert "whose contracts have been executed under the provisions of this Act."

Section 86—In the third line, after "emigrant," insert "whose contract has been executed under the provisions of this Act."

Section 87.—In the fourth line omit the word "the," and after "emigrants" insert "whose contracts have been executed under the provisions of this Act."

Section 88—In the first line omit the word "the," and after "emigrants" insert "whose contracts have been executed under the provisions of this Act."

Section 89—In the fourth line omit the word "the," and after "emigrants" insert "whose contracts have been executed under the provisions of this Act."

Section 96—In the first line, after "emigrant," insert "whose contract has been executed under the provisions of this Act."

His Honor the President moved that the following clauses be added to Section 103 :—

"Such returns shall be kept separate with regard to each class of laborers as above-mentioned, and, in the case of laborers as defined by this Act, the return of laborers employed

shall specify the date on which the contract of each laborer commenced, and the period of service contracted for."

"Copies of such returns shall be entered in a book to be kept by the employer at his place of business or on his estate"

The object of this amendment was that inasmuch as we should in future have two classes of laborers in the tea districts, we should be enabled in the returns to distinguish between laborers bound under the Act, and consequently falling under the special provisions of the Act, from laborers entertained outside the Act.

The motion was agreed to.

On the motion of the President the following fresh sections were inserted after Section 103:—

"(1.) If any laborer shall die, desert, complete his contract, or obtain a release therefrom during the six months preceding any such return as in the last preceding section is mentioned, the fact of such death, desertion, completion of contract, or release, shall be entered in the book to be kept as aforesaid by the employer, opposite the name of such laborer."

"(2.) On the arrival of any laborer, as defined by this Act, on the estate of his employer, the name and description of such laborer shall be entered in the book to be kept as aforesaid by the employer, and in like manner the name and description of every person who shall contract to labor otherwise than under the provisions of this Act shall be so entered. Such book shall be open to the Inspector of Laborers, who shall have power to muster all laborers and other persons lastly hereinbefore mentioned, and to verify the accuracy of the entries in such book."

His Honor the President said he now came to an amendment of some importance. The Council were aware that two meetings ago a proposition was submitted to the Council to omit what had been called the fugitive slave clauses of the Act, that was to say, to take away from the employers of laborers, the planters, the power of seizing a run-away laborer. This subject had given to the Government a great deal of anxious consideration. On the one hand we had felt that the time had come when this power might to some degree be modified; on the other hand we had been inclined to yield in some degree to the representations of the planters that a too sudden change in the procedure in such cases would disturb their relations with the laborers and injuriously affect their interests. Accordingly he had the honor to submit an amendment of the nature of the clauses specified in the amendment paper. Originally it was proposed to take away the power of arrest from the planter, and that a summary proceeding before the Magistrate should be given. But it had been said, and somewhat reasonably said, that the Magistrates in these districts were few and far between; that the power of summary proceeding before the Magistrate would be a somewhat illusory gift; and that until we were prepared to provide Magisterial Officers at reasonable distances, it would not be fair to take away this power and give a practically inoperative remedy. We had in some degree yielded to these representations. We hoped gradually to increase the number of Magistrates, and to form Benches of Magistrates composed of planters and native gentlemen. But until these Benches were established, we were inclined to think that planters had some

reason to exclaim against the too sudden withdrawal of the power of arrest. The effect of the amendments would be that where the magisterial power was established within ten miles of a plantation, there the summary power of arrest would cease; but in parts of the country where there was no Magistrate within a reasonable distance, a reasonable power of arrest would be retained in a modified form and subject to certain provisions as to fine and payment of reasonable compensation in cases of arrest without sufficient cause. That was the proposal His Honor had to submit to the Council, and with a view to carry that out he would propose certain amendments which, if accepted by the Council, would make the 1st and 2nd clauses of Section 123 run thus:—

"If any laborer deserts from his employer's service, and no Magistrate is resident within ten miles of the place where such laborer may be found, such employer, or any other person acting in his behalf, may, without first procuring a warrant and without the assistance of any police officer, who nevertheless shall be bound to give such assistance if called upon to do so, apprehend such laborer; provided nevertheless that if such laborer be found in the service of another employer, he shall not be arrested without a warrant. Provided also that such employer or other person shall without delay give the said laborer in charge at the nearest Police Station, and there enter the charge upon which he shall have apprehended such laborer.

"Any laborer so given in charge shall be conveyed without delay to the nearest Magistrate, and if such Magistrate be authorized to deal with the case, he shall himself adjudicate upon the charge; but if not, he shall forward the said laborer under custody to the Magistrate or Bench of Magistrates authorized to deal with such cases, who shall thereupon adjudicate upon such charge."

The Hon'ble Mr. Dampier said he had an entirely verbal amendment to suggest. As the last limb of the first clause stood, it required the employer to whose protection the laborer had run away without delay to give the laborer in charge. The words "such employer" referred to the last mentioned employer, not the employer to whose estate the laborer had run away. Therefore he proposed to leave out the words "such employer or other person," and substitute for them the words "the person who shall apprehend the laborer under the provisions of this section."

His Honor the President having agreed to adopt the amendment, the motion as amended was agreed to.

On the motion of the President a verbal amendment was made in the 3rd clause of Section 123.

His Honor the President then moved the introduction of the following clause after Clause 3 of Section 123. It was proposed that if the arrest was unreasonable and unjustifiable, it should be competent to the Magistrate to inflict a fine and award compensation to the party aggrieved. His Honor hoped the Council would not think this an improper proposal:—

"If it appears to the Magistrate, or to the Bench of Magistrates adjudicating upon such charge, that such laborer has been apprehended without sufficient cause, it shall be lawful for such Magistrate or Bench of Magistrates to impose a fine not exceeding fifty rupees on the employer at whose instance such laborer has been apprehended, or to award compensation not exceeding fifty rupees to such laborer, and such compensation shall be paid by the employer at whose instance such laborer has been apprehended."

The motion was agreed to.

His Honor the President said he had an amendment to move in Section 12 which might be of some consequence. He found throughout the Bill that important functions were exercised by the Superintendent of Emigration. The Superintendent referred to could only be the Superintendent at Calcutta. His Honor did not quite understand how the Bill would have worked under these provisions; because although it was not now contemplated that contractors' depôts should be established elsewhere than in Calcutta, he believed garden-sirdars were entitled to enlist emigrants and convey them direct to the labor districts. In that case he did not see how the contracts could be signed before, and be attested by, the Superintendent of Emigration. His Honor was very much desirous that facilities should be given for the emigration of laborers and others from the over-populated districts of the west to the eastern districts. We were engaged in opening out roads and otherwise giving facilities for traffic from the west to the east. He was impressed with the belief that the excessive mortality in transit was due to the cholera infection at Goalundo and in the neighbourhood of Dacca. He had not the statistics before him at that moment, but he had found, as the result of very close investigation, that these outbreaks occurred soon after the vessel left Goalundo, and before it got well into Assam. If, therefore, the transit through these parts of the country could be avoided, great loss of life might be saved. It was desirable to encourage direct emigration from the over-populated districts of the west to the under-populated eastern districts. It might be desirable to give facilities for the establishment of depôts on the direct route. In that case we must either alter the frame-work of the Bill or give some of the authorities in other parts of the country the powers of the Superintendent of Emigration. With that view he would move that in the fourth line of Section 12, after the word "Calcutta," the following words be inserted:—

"and may also appoint any proper person to be Superintendent of Emigration at any other place, with all or any of the powers of a Superintendent of Emigration."

The motion was agreed to.

On the motion of the President verbal amendments were made in Schedules (A) and (E).

The Hon'ble the Advocate-General said, in consequence of the amendment of the clauses of Section 123, he proposed to withdraw his amendment as to the omission of Clauses 1 and 2, and to proceed with the amendment which he proposed to put as a fourth clause, and which stood as follows:—

"Upon complaint made to a Magistrate by an employer, or any person acting on his behalf, that a laborer has deserted from his employer's service, such Magistrate may issue a summons for the attendance of such laborer, or a warrant for his arrest, and appoint a day for the hearing of the complaint without previously examining the complainant."

That clause was rendered necessary for the purpose of giving summary jurisdiction to Magistrates. Under the Criminal Procedure Code it was provided that whenever in regard to an offence under any law there was no procedure provided, the procedure of the Code of Criminal Procedure should be adopted. The Code of Criminal Procedure provided that in all applications for arrest there should be an examination of the complainant; and as it would be a hard-

ship to require this in all applications for the arrest of deserting laborers, it was proposed to give this summary jurisdiction. It might be that the employer might be more than ten miles from the place of the apprehension of the laborer. If the Magistrate was satisfied of the fact of desertion, he might issue his warrant for detention without an examination of the complainant. No possible harm could arise, because under the third clause of the section, which was introduced on the motion of His Honor the President, all persons apprehending laborers without sufficient cause were liable to punishment.

His Honor the President said he hoped the Council would accept this amendment. It would merely give a summary and quick mode of proceeding by one instead of two processes.

The motion was agreed to.

His Honor the President said the Council had now gone through all the amendments that had been proposed, and if any hon'ble member had any further amendment, he would have an opportunity of bringing it forward at the next meeting. The intention of the Government was that the Bill should be carefully printed and circulated, and that the Bill should be taken on the further stage that day week.

The Council was adjourned to Saturday, the 20th December.

Saturday, the 20th December 1873.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding.*
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble V. H. Schalch,
The Hon'ble H. L. Dampier,
The Hon'ble Lord Ulick Browne,
The Hon'ble C. E. Bernard,
The Hon'ble Moulvy Abdool Luteef, Khan Bahadoor,
The Hon'ble T. M. Robinson,
The Hon'ble Rajah Joteendro Mohun Tagore, Bahadoor,
The Hon'ble Baboo Digumber Mitter,
and
The Hon'ble B. D. Colvin.

EMIGRATION TO THE LABOR DISTRICTS.

The further consideration of the Bill to amend the law relating to the emigration of laborers to the districts of Assam, Cachar and Sylhet, and to regulate contract labor and service, in order to the settlement of its clauses, was resumed.

The Hon'ble the Advocate-General said he had to move a few verbal amendments in order to render the terms of the Act homogeneous, namely, to express, as far as possible, throughout the Bill the same idea by the same words. The first amendment he had to move was a verbal one, to substitute the word "contracts" for "a contract" in line 4 of Section 3.

The motion was agreed to.

The following amendments were also made on the motion of the Advocate-General :—

In Section 7, line 5, the words "and executed according to the provisions of" were substituted for "in accordance with :"

In Section 49, line 13, "a depôt in a place approved of" were substituted for "the depôt registered": depôts not being registered but approved of under Section 35.

In Section 109, line 5, the word "are" was inserted after "or any of them," to complete the grammatical construction of the sentence.

In Section 122, which was a new section, there were two kinds of seizure of deserters spoken of. The term "apprehend" was used where an employer apprehended a deserter upon his own motion under the provisions of the law. The term "arrest" was used where the apprehension was made under a warrant. The words "or arrested" were, on the motion of the Advocate-General, inserted after "apprehended" throughout the 5th clause of the section, so as to make it more clear that the fine might be imposed or the compensation awarded in both classes of cases, that was to say, where either the apprehension or arrest was made without sufficient cause.

The first clause of Section 5 stood as follows:

"Every contract made with an emigrant, and all arrear of wages due under any such contract, and all fines imposed on any employer under the provisions of this Act, shall be a charge on the lands upon which such laborer has been engaged to work"

THE HON'BLE THE ADVOCATE-GENERAL said it was quite obvious that the word "emigrant" there used meant a laborer as defined under the Bill. The emigrant became a laborer after he got up to the tea districts. He did not think it was intended to give emigrants contracting outside the Act a lien on the estate: such a person would have whatever rights he acquired under his contract outside the Act. The Advocate-General moved the substitution of "laborer" for "emigrant" in line 1.

HIS HONOR THE PRESIDENT said there was no doubt that the amendment which the Advocate-General proposed was somewhat confusing; but inasmuch as the words "every contract made with an emigrant" would operate only as regards emigrants outside the Act under one-year contracts, the section as it stood would not apply to the ordinary laborers under the Act. The result of the amendment would be to put contracts made outside the Act on the footing of any other ordinary contract. HIS HONOR'S only doubt was whether there might not be some obscurity involved in the section as proposed to be amended, because under the definition a man was an emigrant until he arrived in the labor districts.

THE HON'BLE THE ADVOCATE-GENERAL said the contract was made with an "emigrant." When he got up to the labor districts he became a "laborer." As was suggested to the Advocate-General by the Hon'ble Member on his right (Mr. Dampier), the section might be made clearer by using the words "any contract made under the provisions of this Act," it not being the intention to give contracts made outside the Act any privileges or rights beyond what would be

given to them under the law. But if the language of the section was allowed to stand as it was, emigrants with contracts for one year would acquire certain rights and claims upon the land. If an emigrant by his contract got a lien upon the land, well and good; but if he did not get it by the law, he would not get it by this section. The amendments which the Advocate-General would propose in lieu of what he had previously moved, would be as follow:

In line 1 to substitute the words "every contract made according to the provisions of this Act" for "every contract made with an emigrant."

In lines 7 and 8 to substitute the words "any person has been engaged to labor under such contract" for "such laborer has been engaged to work."

In clause 2, line 3, to substitute "person" for "laborer."

His Honor the President said, by the amendments now proposed any laborer under a free contract would not become a special charge upon the land. His position would not depend upon the special provisions of Section 5. It was proposed that a free contract should fall under the operation of the ordinary law, and not under this section.

The motion was then agreed to.

Verbal amendments were, on the motion of the Advocate-General, made in Sections 15 and 78, and in the note to schedule (A).

His Honor the President moved that in Section 89, in the last line but one, the figures "78" be inserted after "76," and in the last line the figures "83" be inserted after "82"; the effect of the amendments would be that the section as amended would run thus:—

"The Magistrate of a district, or of a division of a district, may depute any subordinate Magistrate to exercise the powers and authorities conferred, and perform the duties imposed on a Magistrate under the provisions of Sections 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, and 88."

He might mention that the judicial powers of Magistrates under this Act were entrusted only to Magistrates of the higher grades, those exercising the powers of Magistrates of the 1st and 2nd classes; but under the provisions of this section certain powers which did not require to be exercised by high judicial officers—the executive powers of inspection of vessels and such like, might be deputed by superior Magistrates to subordinate Magistrates of any class. In order to render this procedure uniform, His Honor proposed to add these two sections, which were on all fours with the other sections in the list, and to make the rule complete under which certain duties, and certain duties only, could be executed by any subordinate officer who was deputed for the purpose by his superior officer.

The motion was agreed to.

On the motion of the President, verbal amendments were made in Section 122 and in the note to schedule (A).

His Honor the President said, it had been pointed out to him that in some cases it would be inconvenient if a steamer were detained unnecessarily during six hours of daylight at every station in which a Magistrate was posted. We hoped to render the transit of steamers on the Berhampooter more rapid than at present. It might be that a halting station was not a Magistrate's

station, and it would be necessary to halt again on reaching the Magistrate's post. We thought it necessary that the Magistrate should have the power proposed of inspecting these emigrant vessels; but it did not seem necessary that practically a whole day should be lost in all cases. We therefore proposed the insertion of certain words which would give a discretion to Magistrates. The first part of the section, with the addition of the words proposed, would read thus:

"Every licensed vessel carrying emigrants shall stop at every place in which a Magistrate is stationed intermediate between the places of embarkation and disembarkation of such emigrants, and shall remain during not less than six hours of daylight, *unless the Magistrate shall permit an earlier departure*"

The consequence of the amendment would be that, when everything was in order, the Magistrate might go on board for half an hour, and if satisfied that everything was right, might allow the vessel to proceed on its voyage.

The motion was agreed to.

The Hon'ble the Advocate-General moved that the Bill as amended be passed.

The Hon'ble Mr. Robinson said, before the final vote was taken on this Bill, he would trouble the Council with a very few words. On the introduction of the Bill a desire was expressed by him, on behalf of the Tea interest, that ample time should be given for the consideration of the Bill, and full inquiries made upon the effect of the many alterations proposed by it. He was now anxious to say that the promise that was made at that time by the Government that that should be the case had been most fully and completely fulfilled. No Bill that had ever been before the Council had taken, he believed, so long a time to pass, or had received such ample discussion, or in regard to which so much and such a variety of information had been collected from both official and non-official sources, as in regard to this Bill And he rejoiced the more that that had been the case, because he thought it must be admitted that the inquiries that had been made tended to show that the planters as a body had treated their laborers fairly and humanely, and had shown every disposition to act in accordance with the law in all matters connected with their business. The Bill, like all Bills, had been finally settled by a series of compromises, and as it would now be passed, he thought that those compromises, having been made in a spirit of fairness, had brought it into a state equitable to the interests concerned. He thought that every question that had been raised had been fully and fairly considered, and there had been every disposition on the part of the Government to consult the interests both of planters and coolies. He trusted that, in the course of a few years, legislation of this kind would be no longer necessary for the Tea districts; that their condition would be so changed that the execution and enforcement of contracts might safely be left to the operation of the ordinary law of the land. Meantime he earnestly hoped that there would be no further legislation on this subject, which had been now so often and carefully discussed, and that no measure relating to it would again be brought before this or the Supreme Council, unless it was the introduction of a short Act to repeal this Bill entirely.

His Honor the President said, before putting the question to the vote, he thought it right that he should, on the part of the Government, express the very great gratification with which he had listened to the observations of the Hon'ble Member who had just spoken. The Government did value extremely the testimony that he had been good enough to bear as to the fairness and fullness with which the questions which had been raised had been discussed. His Honor was glad that the Hon'ble Member had been good enough to bear testimony to the fact that ample opportunity for full discussion by all parties had been given. He trusted they had now, by the labors of the Committee and the Council, and more especially by the labors of the learned Advocate-General, who was in charge of this Bill, arrived at a conclusion satisfactory to all parties. He took it that he might receive the expression of opinion which the Hon'ble Member had now given as a testimony to the belief of those whom he represented, as it was our belief, that the compromises to which we had arrived were the best compromises which the wisdom of this Council could devise; and so far as human foresight could foresee, we hoped that they would work well. His Honor thoroughly endorsed what the Hon'ble Member had said with regard to the enquiries that had been made, that they did show that the planters, as a body, had treated their coolies fairly and well; and he was sure that it was the wish of Government, and of all of us, that we should do the utmost that we could to promote this great Tea industry; to promote the development of those districts which were so lately covered with jungle; to do everything in our power to promote the welfare of these districts, the increase of tea cultivation, and the general development of the productions and the revenue of the country.

In regard to the question which had lately most occupied the attention of the Council, and which had been settled by a compromise, he was more and more sanguine that we had made a fair compromise. Assam was a long way off, and some of the opinions from that district did not arrive until a late stage of our proceedings; but he was happy to find that they went to corroborate and endorse the view the Council had arrived at. He found that in Assam, although the planters were not so sanguine as they were in Cachar, there seemed to be a general concurrence of opinion that it was desirable that free labor should, to some extent, be tried. It was suggested by several experienced planters and others that it was quite possible that free labor might sooner or later find its way into Assam. We were told that recruits for the regiments in Assam came of themselves from various parts of the North-Western Provinces, and it was suggested that when the roads which were now being opened were put into proper order, and resting and cooking-places and other conveniences for travelling provided, free labor would find its way into Assam. That would be an extremely desirable result. His Honor not only concurred in most of the observations that had been made by the Hon'ble Member, but he thoroughly concurred in the last observation, that he hoped legislation on this subject might not be further necessary. His Honor hoped and trusted that the Bill, which was now about to be passed through its final stage—if the Council should see fit to pass the Bill and it should receive the assent of the Viceroy—might suffice for some time to come, and be beneficial in its results; and he hoped that

on the next occasion on which legislation might be proposed, it might be in the shape the Hon'ble Member had suggested, namely, that all special legislation be brought to an end, and that the labor districts being fitted for free emigration, might be brought under the operation of the ordinary law of the land.

The motion was agreed to.

REGISTRATION OF MAHOMEDAN MARRIAGES AND DIVORCES.

THE HON'BLE MR. DAMPIER said the Select Committee on the Bill to provide for the Voluntary Registration of Mahomedan marriages and divorces was required to report within one month. But the Hon'ble Member whose knowledge was most special on the subject had only just returned to his place in Council. It would therefore be impossible to submit a report within the month, and he now asked that the Committee be allowed to report within two months of the date of appointment.

The motion was agreed to.

The Council was adjourned to a day of which notice would be given.